87-1867 (1)

Supreme Court, U.S.
FILED
MAY 6 1988
JOSEPH F. SPANIOL, JR.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

SANDRA TURNER, ET AL.

PETITIONERS

v.

LINDA MCMAHON, OTIS R. BOWEN, ET AL.

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MARK N. AARONSON
ATTORNEY OF RECORD
San Francison Lawyers Committee
for Urban Affairs
301 Mission St., Suite 400
San Francisco, Calif. 94105
(415) 543-9444

MARK GREENBERG
RICHARD A. ROTHSCHILD
Western Center on Law and Poverty, Inc.
3535 W. 6th St.
Los Angeles, Calif. 90020
(213) 487-7211

MARILYN KAPLAN
Orrick, Herrington & Sutcliffe
600 Montgomery St.
San Francisco, Calif. 94111
(415) 392-1122

52

QUESTION PRESENTED

Whether Congress withdrew the equitable jurisdiction of federal district courts to determine who should bear the costs of an injunction subsequently reversed when Congress mandated that states recover any "overpayments" received by Aid to Families with Dependent Children (AFDC) recipients.

PARTIES TO THE PROCEEDING

Debra Scruggs and Jerrylean Baker are also plaintiffs. Plaintiffs-Petitioners proceed on behalf of a certified class composed of past, present and future California AFDC recipients who have been or will be affected by the policy and practice of considering mandatory payroll deductions such as federal and state income tax, state disability insurance (SDI) and FICA withholding as income currently and actually available in calculating grants and determining eligibility.

Defendant Linda McMahon is the Director of the California Department of Social Services. Other Defendants are the California Department of Social Services, Jesse Huff, Director of the California Department of Finance, and the California Department of Finance.

Otis R. Bowen, Third-Party Defendant-Respondent, is the Secretary of the United States Department of Health and Human Services.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING. ii

OPINIONS BELOW 1

JURISDICTION 1

STATUTE INVOLVED 2

STATEMENT. 2

REASONS FOR GRANTING THE PETITION. . . .11

I. THE COURT OF APPEALS IMPROPERLY CONSTRUED SECTION 402(a)(22) TO EFFECT A WITHDRAWAL OF A DISTRICT COURT'S EQUITABLE JURISDICTION TO DECIDE WHO BEARS THE COSTS OF A REVERSED INJUNCTION 12

A. Deciding who bears the costs of a reversed injunction is an essential part of a court's equity jurisdiction. 13

B. The Court of Appeals' decision divests a district court from jurisdiction to decide who bears the costs of a reversed injunction.. 16

C. The Court of Appeals erred in construing a statute to effect an incursion into a court's equitable powers absent an explicit statement from Congress.. 19

D. Curtailment of a district court's equitable discretion will cause serious harm to AFDC recipients, and will constrict their access to the federal courts. 24

II. THE COURT OF APPEALS' CONSTRUCTION OF SECTION 402(a)(22) MISCONSTRUES CONGRESSIONAL INTENT ON AN ISSUE OF CRITICAL IMPORTANCE TO THE AFDC PROGRAM 30

A. The Court of Appeals erred in concluding Section 402(a)(22) has a plain meaning that necessarily includes court-ordered payments within the definition of overpayments. . .31

B. The Court of Appeals erred in failing to interpret Section 402(a)(22) in light of evidence of Congressional purpose.. 35

CONCLUSION 43

TABLE OF AUTHORITIES

Page(s)

Cases

Arkadelphia Milling Co. v. St. Louis Southwestern R.R. Co., 249 U.S. 134 (1918). 8, 13, 16

Atlantic Coast Line Ry. Co. v. Florida, 295 U.S. 301 (1935). 14

Brown v. Swann, 10 Pet. 496 (1836) . . .22

Crowell v. Benson, 285 U.S. 22 (1932). 22

Chapman v. Houston Welfare Rights Org., 441 U.S. 600 (1979). 41

Detroit Newspaper Publishers Assn. v. Detroit Typographic Union, 471 F.2d 872 (6th Cir. 1972), cert. denied, 411 U.S. 967 (1973). 41

Edelman v. Jordan, 415 U.S. 651 (1974). 29

Federal Power Commission v. Interstate Natural Gas, 336 U.S. 577 (1949) 14

W.R. Grace and Co. v. Local Union 759, 461 U.S. 757 (1983). . . .16

Hecht Co. v. Bowles, 321 U.S. 321 (1944). 12, 20, 22

Heckler v. Turner, 468 U.S. 1305 (1984) 3

Heckler v. Turner, 470 U.S. 184 (1985). 3

Inland Steel Co. v. United States, 306 U.S. 153 (1939) 14

Lopez v. Heckler, 713 F. 2d 1432 (9th Cir.), rev. in part on other grounds, 463 U.S. 11328 (1983). 15

Maine v. Thiboutot, 448 U.S. 1 (1980). 6

Porter v. Warner Holding Co., 328 U.S. 395 (1946) 12, 19

Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983). 3

Turner v. Woods, 559 F. Supp. 603 (N.D.Cal. 1982). 3

United States v. Morgan, 307 U.S. 183 (1939) 14

Watt v. Alaska, 451 U.S. 259 (1981). 38

Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982) . . .12, 19, 21, 22

Statutes

28 U.S.C. §1254(1) 1

28 U.S.C. §1331. 7

28 U.S.C. §1343(3) 7

28 U.S.C. §1343(4) 7

33 U.S.C. §1251 et seq.. 21

42 U.S.C. §602(a)(22) . . . . . .passim

42 U.S.C. §603(i). 33

42 U.S.C. §1983. 6

45 C.F.R. §205.10(a)(6). 26

45 C.F.R. §233.20(a)(13)(i). 26, 32

45 C.F.R. §233.20(a)(13)(i)(A) . . . 5, 24

45 C.F.R. §233.20(a)(13)(i)(B) . . . 5, 24

45 C.F.R. §233.20(a)(13)(vi) 18

AFDC Statute, Sections 402 and 403 34

Social Security Act, Section 402(a)(22) . . . . . .passim

Social Security Act, Section 403(i) 33

Social Security Act, Section 403(i)(1)(C). 35

Miscellaneous Authorities

Article III, United States Constitution 22

Calif. Dept. of Social Services Manual of Policies and Procedures §44-350. 24

Emergency Price Control Act of 1942, Section 205(a), 56 Stat. 23, 50 U.S.C. App.Supp II, §§901, 925 20

Fed. R. Civ. Proc. Rule 23 27

Health and Human Services Action Transmittal No. SSA-AT-85-10. 4

Omnibus Budget Reconciliation Act (OBRA) of 1981, 95 Stat. 856-57 31

Report of the Senate Finance Committee, S. Rep. No. 97-139, 97th Cong., 1st Sess., pp. 519-520. . . .36, 37, 38
Senate Finance Committee Print No. 97-5, 97th Cong., 1st Sess., at p. 41 39

Testimony before the Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, House of Representatives 39

U.S. Code Cong. & Admin. News, 396, 785-86 39

Petitioners petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals from which petitioners seek a writ of certiorari is reported at 830 F.2d 1003. App. 1[1] That opinion reverses the unreported decision of the district court. App. 30.

JURISDICTION

The decision of the court of appeals was entered on October 16, 1987. A petition for rehearing and rehearing en banc was denied on February 22, 1988. App. 58. This Court has jurisdiction to review the judgment by writ of certiorari pursuant to 28 U.S.C. §1254(1).

---

[1] "App." refers to the Appendix filed along with the Petition for Certiorari.

STATUTE INVOLVED

Section 402(a)(22) of the Social Security Act, 42 U.S.C. §602(a)(22) provides:

> A state plan for aid and services to needy families with children must . . .
>
> (22) provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan . . .

The full text of Section 402(a)(22) is located at App. 62.

STATEMENT

This proceeding arose when California, acting under instructions of the U.S. Department of Health and Human Services, began to treat as overpayments AFDC benefits paid pursuant to a federal district court injunction after that injunction was reversed on appeal. The state sought to recover these funds by using the mandatory and automatic provisions of Section 402(a)(22) of the Social Security Act. Under Section 402(a)(22), states reduce monthly grants to current recipients and

initiate collection action against former recipients to recover program overpayments.

The original dispute in this case concerned procedures for determining AFDC benefits for working poor families in California. On July 29, 1982, the district court issued a permanent injunction providing that, when California calculated AFDC eligibility and benefits for working families, the state should not treat funds withheld for mandatory payroll deductions as income to the families. Turner v. Woods, 559 F. Supp. 603 (N.D. Cal. 1982). The Ninth Circuit affirmed the district court's injunctive order. Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983). The injunction was stayed, per order of Justice Rehnquist, on July 19, 1984. Heckler v. Turner, 468 U.S. 1305 (1984). Thereafter, this Court reversed the judgment of the Ninth Circuit. Heckler v. Turner, 470 U.S. 184 (1985).

As a result of this series of deci-

sions, members of the Turner class had their AFDC benefits calculated without treating mandatory payroll deductions as income from September 1982, when the district court's injunction was implemented, until September 1984, when the stay of the injunction issued by Justice Rehnquist was implemented.

On April 30, 1985, the Secretary of Health and Human Services issued Action Transmittal No. SSA-AT-85-10. App. 11. The Action Transmittal directed states to recover as AFDC "overpayments" benefits paid where mandatory payroll deductions had been disregarded.

California then began its administrative procedures for overpayment recovery. Under those procedures, enacted under the authority of Section 402(a)(22), California would reduce AFDC grants for current recipients to a level which would leave each affected family with a total income of

90% of the state's AFDC payment level.[2] California would proceed against class members no longer receiving AFDC by use of collection letters, and "appropriate action under state law." See App. 32; 45 C.F.R. §233.20(a)(13)(i)(B).

Plaintiffs sought relief from the district court to prevent the state from using the procedures adopted under Section 402(a)(22) to recover the benefits paid pursuant to the court's injunction. Plaintiffs acknowledged that the state could petition the district court for an order requiring restitution of benefits paid under the injunction. However, plaintiffs denied that the state could circumvent the court's equitable powers by unilaterally reducing the AFDC grants of

---

[2] 45 C.F.R. §233.20(a)(13)(i)(A) provides that a state, when recovering an overpayment, may reduce the family's grant to a level where the combination of the assistance unit's aid, other income, and liquid resources equal 90% of the AFDC amount payable to an assistance unit of the same composition with no income. App. 65.

class members to recover the funds at issue.

Plaintiffs asked the district court to prohibit the state from recovering pursuant to Section 402(a)(22) the benefits paid to plaintiff class members under the reversed injunction. In the alternative, plaintiffs sought leave to file a supplemental complaint specifically adding a cause of action challenging the state's interpretation and application of Section 402(a)(22). The district court granted plaintiffs' motion to file a supplemental complaint; the state answered and named the federal government as a third-party defendant; and the parties filed cross motions for summary judgment.

Subject matter jurisdiction properly lay in the district court under 28 U.S.C. §§1331, 1343(3) and 1343(4), and plaintiffs had a cognizable claim for relief under 42 U.S.C. 1983. Maine v. Thiboutot, 448 U.S. 1 (1980).

The district court granted summary judgment and injunctive relief for plaintiffs. App. 32. The district court first held that payment made pursuant to a permanent injunction are not "overpayments" within the meaning of Section 402(a)(22). App. 43. Reviewing the history of section 402(a)(22), the court concluded that "[n]othing in this legislative history suggests Congress intended to require states to recover funds paid pursuant to a court-ordered injunction." App. 42. Rather, the legislative history made clear that the purpose of the provision was to require states to recover "overpayments" resulting from recipient or agency error. Congress, by mandating correction of overpayments and underpayments, was seeking to minimize errors by AFDC recipients and program administrators. The statutory provision was not intended to address the circumstances of payments made pursuant to court order. App. 33-43.

While the state had not petitioned for restitution, the state had made equitable arguments in support of its attempts to use Section 402(a)(22) to recover the court-ordered payments. In response, the district court addressed these equitable arguments. Under equitable principles of relief, a court may order a party who obtains benefits from an improperly issued injunction to restore the benefits to the other party. Arkadelphia Milling Co. v. St. Louis Southwestern R.R. Co., 249 U.S. 134, 145 (1918); App. 45-47. In balancing the harms between the parties, the court observed that the effect of a 10% grant reduction would be "near catastrophic" for class members. App. 48. The harm that would be suffered by the government in the absence of recoupment was less severe than that to be suffered by individual plaintiffs should recoupment proceed. App. 49. Further, the fact that the initial action was brought in good faith on a legal issue

in dispute was also relevant to the equities. App. 50.

The district court enjoined California from instituting collection efforts pursuant to Section 402(a)(22) against class members who had benefited from the reversed injunction. App. 52. Since the state had made no petition for restitution, the court had no occasion to decide that issue. App. 44, 50, n.3.

The court of appeals reversed the district court's decision. App. 1; 830 F.2d 1003. It held that the plain meaning of "overpayment" included benefits paid out pursuant to court order. It then "examined the legislative history for the sole purpose of determining whether, notwithstanding the plain language of the statute, there is a clearly expressed intention to exclude recoupment of overpayments made pursuant to court order." App. 21-22; 830 F.2d at 1008. Finding no reference to payments under court order in the legisla-

tive history, the court concluded California could directly recoup benefits paid under the injunction court order through its Section 402(a)(22) procedures. The appellate court rejected plaintiffs' assertion that Section 402(a)(22), as construed, effected a curtailment of the district court's equitable jurisdiction to determine who should bear the costs of a reversed injunction. App. 26-27; 830 F.2d at 1009. The Court viewed Section 402(a)(22) as not limiting a district court's equitable jurisdiction; rather, the court viewed Section 402(a)(22) as merely expanding the remedies available to a state to recover overpayments. The court of appeals also observed that if an individual were dissatisfied with the decision of the welfare department, he or she could seek an administrative hearing and subsequent state judicial review of the hearing decision. App. 26; 830 F.2d at 1008.

REASONS FOR GRANTING THE PETITION

This case raises the important issue of whether, absent an express statement by Congress, a statute may be construed to curtail the equitable discretion of district courts to manage the effects of injunctive relief. If the Ninth Circuit's opinion is allowed to stand, it will serve as precedent for the principle that a restriction on the equitable powers of the courts may be inferred from Congressional silence. The decision breaks with past decisions of this court, which hold that abrupt departures from traditional equity practice are not to be implied. It creates a novel exception to the continuing equitable jurisdiction of a district court after an appellate reversal.

The Court should grant certiorari for two reasons. First, the decision of the court of appeals is irreconcilable with the principle that construing a statute to limit a court's equitable powers when based

on anything less than an explicit statement by Congress is highly disfavored. Weinberger v. Romero-Barcelo, 456 U.S. 305, 313 (1982); Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946); Hecht Co. v. Bowles, 321 U.S. 321, 329-30 (1944). Second, the decision misapplies the plain meaning rule of statutory construction, and thereby misconstrues Congressional intent on an issue of critical importance to the national administration of the AFDC Program.

I. THE COURT OF APPEALS IMPROPERLY CONSTRUED SECTION 402(a)(22) TO EFFECT A WITHDRAWAL OF A DISTRICT COURT'S EQUITABLE JURISDICTION TO DECIDE WHO BEARS THE COSTS OF A REVERSED INJUNCTION

Historically, a court that grants an injunction has had the equitable discretion to determine who bears the burden of a reversed injunction. Under the court of appeals' decision, this aspect of equitable jurisdiction will no longer apply in AFDC litigation. Instead, states will invoke,

on their own initiative, the overpayment recovery procedures of Section 402(a)(22) to recoup funds paid under an AFDC injunction. The state will act without regard to whether the district court views this result as comporting with principles of equity. In short, the states in AFDC cases will be able to circumvent the full equitable jurisdiction of district courts. The court of appeals upheld this encroachment despite a legislative record giving no hint that Congress had contemplated such a result.

A. Deciding who bears the costs of a reversed injunction is an essential part of a court's equity jurisdiction.

It is well settled that the ability of a court "to correct that which has been wrongfully done by virtue of its process" is one of its inherent equitable powers. Arkadelphia Co., v. St. Louis Southwestern Ry. Co., 249 U.S. 134, 145-146 (1919). Ordinarily, a court which has issued

injunctive relief, modified or reversed on appeal, has broad authority to undo the effects of the earlier order so long as it acts in accord with equitable principles that protect all interests affected-including the public interest. Federal Power Commission v. Interstate Natural Gas, 336 U.S. 577, 582-83 (1949); United States v. Morgan, 307 U.S. 183, 191 (1939); Inland Steel Co. v. United States, 306 U.S. 153, 157 (1939). Restitution under these circumstances is not an absolute right. It is "ex gratia, resting in the exercise of a sound discretion, and the court will not order it where the justice of the case does not call for it..." Atlantic Coast Line Ry. Co. v. Florida, 295 U.S. 301, 310 (1935) (citations omitted).

This equitable discretion is an essential attribute of the court's equity jurisdiction. A court in a welfare case as in other cases, decides whether to grant an injunction after considering the merits of

the legal argument, the relative hardships for the affected parties and the public interest. See Lopez v. Heckler, 713 F.2d 1432, 1435-36 (9th Cir.), rev. in part on other grounds, 463 U.S. 11328 (1983). The remedial decision to grant an injunction is separate from the judgment on the merits of the plaintiff's claim. If a balancing of the hardships and the public interest do not favor the granting of the injunction, a court will not order it. Hecht Co. v. Bowles, 321 U.S. 321, 326, 331 (1944). The court also has the authority to stay the injunction pending appellate review.[3] The presumption is that absent a bond or a stay, the parties against whom an injunction issues bear the economic consequences

---

[3] In the Ninth Circuit, the "standard for evaluating stays pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction." Lopez, 713 F.2d at 1435. The critical elements in deciding whether to grant a stay are the relative hardships to the parties and the public interest. Id. at 1435-36.

of compliance, no matter what happens on appeal, unless the issuing court after reversal exercises its equitable discretion to grant restitution on a claim of malicious prosecution or unjust enrichment. W.R. Grace and Co. v. Local Union 759, 461 U.S. 757, 770, n. 14 (1983); Arkadelphia, 249 U.S. at 134. The decision whether to grant an injunction initially, and decisions about how to distribute the costs of a reversed injunction both require a court to use its equitable powers.

B. The Court of Appeals' decision divests a district court from jurisdiction to decide who bears the costs of a reversed injunction.

The court of appeals' decision divests a court from the ability to determine who should bear the costs of a reversed injunction in an AFDC case. Its interpretation of Section 402(a)(22) lets state welfare agencies avoid district court jurisdiction after appellate reversal, since they are able to initiate collection procedures on

their own. Accordingly, a state need not confront a judicial weighing of the relative hardships and the public interest before acting against AFDC families who benefited from injunctive relief.

The court of appeals emphasized that an individual charged with an overpayment can seek an administrative hearing and subsequent state judicial review. App. 26; 830 F.2d at 1008. The court assumed that equitable concerns would receive the same consideration in these proceedings as if a claim for restitution had been brought by the state in federal district court. This impression is erroneous.

If a payment is held to be an "overpayment" within the meaning of Section 402(a)(22), a state has no discretion to decline collection activities as "inequitable." By its terms, the statute mandates recovery of "any" overpayment, with a single exception unrelated to equitable

considerations.[4] Accordingly, the only germane issues in administrative proceedings after a notice of overpayment are whether the particular family received an overpayment, the amount of the overpayment, and the amount to be recovered monthly. Subsequent state judicial review is limited to the same issues.

The Ninth Circuit erred when it characterized Section 402(a)(22) as merely expanding a state's remedies and not affecting judicial review. App. 27; 830 F.2d at 1009. Section 402(a)(22), as construed by the court of appeals, completely obviates the need to seek restitution from the court that issued the injunction. The decision of the court of appeals, in

---

[4] The statute provides that in the case of a former recipient with a non-fraud overpayment, a state may decline to make collection efforts if such efforts are not cost-effective, in accordance with dollar limitations prescribed by the Secretary. By regulation, the Secretary limits application of this provision to instances where the overpayment is less than $35. 45 C.F.R. §233.20(a)(13)(vi). App. 70-71.

effect, allows state administrative actions to preempt the authority of the courts to manage the consequences of equitable relief.

C. The Court of Appeals erred in construing a statute to effect an incursion into a court's equitable powers absent an explicit statement from Congress.

An abiding principle of statutory construction is that the comprehensiveness of a court's "equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command." Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946). This Court repeatedly has held that statutory interpretations which suggest that Congress by implication has limited a court's inherent equitable powers are especially disfavored. Weinberger v. Romero-Barcelo, 456 U.S. 305, 313 (1982); Hecht Co. v. Bowles, 321 U.S. 321, 329-330 (1944). The expectation is that "if Congress desired to make...an abrupt

departure from traditional equity practice as is suggested, it would have made its desire plain." Hecht, at 330. Absent such an explicit statement, this Court has declined to construe legislation as withdrawing a court's equitable discretion even when Congress has sought to specify terms under which an injunction shall be issued.

For example, in Hecht, the Court construed language providing that "... upon a showing by the Administrator that such person has engaged or is about to engage in [certain specified acts] a permanent or temporary injunction, restraining order, or other order shall be granted without bond."[5] 321 U.S. at 322. Notwithstanding this language, the Court rejected the claim that the Administrator was entitled to issuance of an injunction on showing that the specified acts had occurred. 321 U.S.

---

[5] Section 205(a), Emergency Price Control Act of 1942, 56 Stat. 23, 50 U.S.C. App.Supp II, §§901, 925.

at 328. The Court explained:

> A grant of jurisdiction to issue compliance orders hardly suggests an absolute duty to do so under any and all circumstances. We cannot but think that if Congress had intended to make such a drastic departure from the traditions of equity practice, an unequivocal statement of its purpose would have been made.

Id. at 329.

The point was reiterated in Romero-Barcelo, in which the Court rejected a claim that the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., required a district court to immediately enjoin all discharges of pollutants that do not comply with the Act's permit requirements. 456 U.S. at 320. The Court declined to read the Act as forcelosing completely the exercise of the court's discretion. It explained:

> [W]e construe the statute at issue "in favor of that interpretation which affords a full opportunity for equity courts to treat enforcement proceedings . . . in accordance with their traditional practices, as conditioned by the necessities of the public interest which Congress

has sought to protect."

Id. at 320, citing Hecht, 321 U.S. at 330.

The interest in avoiding a result which curtails the equitable powers of courts where Congress has made no explicit command has long roots in Anglo-American legal history. "The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction." Brown v. Swann, 10 Pet. 496, 506 (1836). This caution is a necessary aspect of assuring the independence of the judiciary as required by Article III of the Constitution. It is, in addition, a way to avoid conflict and harmonize the separate powers of federal courts and Congress. Crowell v. Benson, 285 U.S. 22, 62 (1932).

Just as with Romero-Barcelo and Hecht, the instant case puts at issue the traditional equitable powers of a court. However, the approach taken by the Ninth Circuit stands in marked contrast with the

approach of Romero-Barcelo and Hecht.

Here, neither the language nor the legislative history of Section 402(a)(22) evidence any Congressional intent to curtail the equitable powers of district courts after reversals of injunctive orders. Congress merely directed state agencies to recover overpayments and correct underpayments, without defining either term. As discussed, infra, at 30-42, the legislative record for Section 402(a)(22) gave no suggestion that Congress sought to withdraw a court's traditional authority to decide what should be done after an injunction is reversed on appeal.

There is a substantial difference between the language Congress has used elsewhere when it sought to restrict the equitable discretion of ccurts and the language of Section 402(a)(22). Plaintiffs are aware of no other instance where an incursion into equity jurisdiction was found from language and legislative history

comparable to that presented here.

D. Curtailment of a district court's equitable discretion will cause serious harm to AFDC recipients, and will constrict their access to the federal courts.

If the court of appeals' decision stands, California will reduce AFDC grants for affected recipients to a level that leaves each affected family with a total income of 90% of the state's AFDC payment level. 45 C.F.R. §233.20(a)(13)(i)(A); App. 66-67; Calif. Dept. of Social Services Manual of Policies and Procedures §44-350. California will proceed against class members no longer receiving AFDC by "appropriate action under state law." 45 C.F.R. §233.20(a)(13)(i)(B), App. 67. The potential impact of these collection efforts on individuals living at subsistence levels of support is especially devastating.

For example, in 1986 when the question regarding the treatment of Turner I benefits as overpayments was before the dis-

trict court, class member Dorothy Lum received a monthly AFDC grant of $587 as the sole source of income for her two children and herself. She paid $490 for rent, a typical amount in the tight rental market in California cities for poor families not living in public housing or receiving other governmental subsidies. If the state lowered her AFDC assistance to 90% of the grant level for her family size, her assistance would have been $529 per month. After paying rent, this family of three would have had a total of $39 to meet every other monthly family expense.

In light of this type of impact, which would be repeated in numerous other individual situations, the district court found that the harm "suffered by the government in the absence of recoupment [was] less severe than that to be suffered by individual plaintiffs should recoupment pro-

ceed."[6] App. 49. It further commented that it was "extremely unlikely that AFDC recipients [would] have budgeted for the return of funds granted them by court order." App. 49.[7]

The harm caused by the court of appeals decision goes beyond the mere fact

---

[6] Though the district court discussed the equities, it expressly noted that there was no action for restitution before the court. App. 44. Accordingly, the portion of the Ninth Circuit's opinion stating that the district court held the state had no common law right of recoupment, (App. 15, 830 F.2d 1006), is simply erroneous.

[7] Payments made under court order in a class action are different from the more usual situation in AFDC administration, where a recipient who objects to action taken in his or her case may request an administrative fair hearing and may choose to receive aid paid pending the hearing. 45 C.F.R. §205.10(a)(6). Aid is paid regardless of the merits of the claim, and the recipient is required to repay the aid if he or she loses the hearing. 45 C.F.R. §233.20(a)(13)(i). In contrast, a recipient receiving benefits as a result of a class action decision, receives those benefits not because of a procedural opportunity irrespective of the claim, but because a court has held the recipient to be legally entitled to the benefits.

that affected families are forced to live at a level lower than the state-recognized standards of subsistence. The decision creates a chilling effect that will pervade all litigation around policies and practices of the AFDC program. Like the Lum family, other beneficiaries in class actions will find themselves innocent victims of monthly grant reductions because of appellate court reversals. Unlike litigants in other contexts, however, these individuals will not enjoy the protections of a court of equity before decisions are made to shift the costs of an eventually overturned injunction to them.

This result is particularly unfair to the unnamed class members. AFDC class actions typically proceed pursuant to Rule 23(b)(2), Fed. R. Civ. Proc. There is no requirement for class notice of the pendency of the proceeding. Absent a settlement or compromise, see Rule 23(e), there may be no notice at any stage of the proceeding.

There is no opportunity to opt out of the class. Yet months or years later, a scrupulously honest indigent family may be charged with a substantial overpayment if the injunctive relief is reversed.

The problem cannot be adequately resolved by orders requiring notice of pending proceedings. At any point, there may be a number of orders affecting AFDC program rules. Recipients are not able to evaluate the likelihood of ultimate appellate success for each pending case. Nor can they reasonably set aside a portion of each month's subsistence grant in a contingency fund in anticipation of possible appellate reversal. Nor can recipients or state agency workers continually calculate alternative budgets based on unknown future appellate dispositions.

The opinion imposes a Hobson's choice on program beneficiaries wishing to challenge alleged unlawful conduct. On the one hand, they can simply decline to seek any

injunctive relief until the case is finally resolved by this Court or until review is denied by this Court. If they prevail, they will have been denied desperately needed benefits for the number of years in which the case was litigated. Since the Eleventh Amendment prohibits a federal court from granting retroactive benefits absent state waiver, Edelman v. Jordan, 415 U.S. 651 (1974), the affected families will never receive the relief to which they were entitled.

On the other hand, if beneficiaries seek injunctive relief prior to final appellate disposition, there are potentially dire consequences for affected class members. So long as the case is pending at any stage in the courts, every family in the class will be at risk no matter how accurately it reports its circumstances, and no matter how carefully the family follows the law. If they are subjected to overpayment recoupment, they will have less

than the state-recognized minimum standards for the months or years in which overpayment recovery occurs.

The Court should grant certiorari to consider the correctness of a decision that so seriously impairs the ability of the district courts to do equity in managing the consequences of injunctive relief.

II. THE COURT OF APPEALS' CONSTRUCTION OF SECTION 402(a)(22) MISCONSTRUES CONGRESSIONAL INTENT ON AN ISSUE OF CRITICAL IMPORTANCE TO THE AFDC PROGRAM

The Ninth Circuit panel did not seek to construe Section 402(a)(22) in light of its purpose. Rather, it initially concluded that the funds at issue fell within the plain meaning of the term "overpayment." Having reached this conclusion, the Court of Appeal "examined the legislative history for the sole purpose of determining whether, notwithstanding the plain language of the statute, there is a clearly expressed intention to exclude recoupment of overpayments made pursuant to court order."

App. 21-22; 830 F.2d at 1008 (emphasis added).

This constricted approach to examining legislative history was erroneous. Had the Court reviewed the legislative history with a goal of determining Congressional intent, that history would have shown that Congress was neither addressing nor seeking to change treatment of AFDC benefits paid under a subsequently reversed court order.

A. The Court of Appeals erred in concluding Section 402(a)(22) has a plain meaning that necessarily includes court-ordered payments within the definition of overpayments.

Section 402(a)(22) was enacted as part of the Omnibus Budget Reconciliation Act (OBRA) of 1981, 95 Stat. 856-57. The critical statutory language states:

> A state plan for aid and services to needy families with children must...
>
> (22) provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan...

42 U.S.C. §602(a)(22). The statute does not define the term "overpayment." The implementing regulatory provision, like the statute itself, does not explicitly mention court-ordered benefits. 45 C.F.R. §233.20(a)(13)(i); App. 65.[8]

The court of appeals limited its review of the legislative history of Section 402(a)(22) because it concluded that the plain meaning of "overpayment" includes any payments made under a subsequently reversed court order. In reaching this conclusion, the Ninth Circuit focused on the adjective "any", and neglected to determine whether the term "overpayment" has a single plain meaning. However, the past and present practices of the Department of Health and Human Services (HHS), the agency charged with administering the

---

[8] The regulation provides "Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible."

statute, do not support the notion that "overpayment," on its face, encompasses court-ordered benefits.

The term "overpayment" appears in both Sections 402 and 403 of the AFDC statute. HHS treats payments under a reversed court order as overpayments for purposes of Section 402, but not for purposes of Section 403. Section 403(i) of the Social Security Act, 42 U.S.C. §603(i), authorizes HHS to impose financial penalties on states for erroneous excess payments. The statute defines "erroneous excess payments" as including both payments to ineligible families and "overpayments to eligible families." Section 403(i)(1)(C). If "overpayments" necessarily include any payments made under a later-reversed court order, it would follow that HHS must impose fiscal sanctions on states for making court-ordered payments if the court order is later reversed. Yet HHS does not impose fiscal sanctions on states for making

payments under court order. If the same term is given a different meaning in different portions of the statute, then it cannot be said that the term has a single plain meaning.

A second indication that court-ordered payments are not within the plain meaning of the word "overpayment" is that HHS and state welfare agencies never treated them that way before this litigation. Before enactment of Section 402(a)(22) in 1981, there was no mandatory statutory requirement to recover overpayments. The states, however, had the authority to take such action. See former 45 C.F.R. §233.20(a)(12(i),(ii). Forty two states had an overpayment recovery policy. However, neither the federal nor state governments have identified a single case where the term "overpayment" was extended to court-ordered payments prior to this case.

A further indication that court

ordered payments are not within the plain meaning of the statutory term is that HHS still does not consistently interpret the provision to require all states to recover the funds paid pursuant to court order. HHS did not object to a stipulated settlement where the State of Washington agreed not to recover benefits paid under court order, in another case involving the identical legal issue concerning mandatory payroll deductions. See App. 43, n.2.

Absent a statutory definition, and in light of the inconsistent regulatory use, the term "overpayment" is not so clear as to justify the court's constricted examination of legislative history.

B. The Court of Appeals erred in failing to interpret Section 402(a)(22) in light of evidence of Congressional purpose.

Notwithstanding its belief that the term "overpayment" had a single plain meaning, the court of appeals still should have considered legislative history to

determine whether text which appeared unambiguous was ambiguous when considered in context. In Watt v. Alaska, 451 U.S. 259 (1981), this Court explained:

> We agree with the Secretary that "[t]he starting point in every case involving construction of a statute is the language itself." But ascertainment of the meaning apparent on the face of a single statute need not end the inquiry. This is because the plain-meaning rule is "rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists." The circumstances of the enactment of particular legislation may persuade a court that Congress did not intend words of common meaning to have their literal effect.

451 U.S. at 265-66 (citations omitted).

The court of appeals should not have looked at legislative history for the "sole" purpose of determining whether Congress expressly excluded court ordered payments from the definition of "overpayment." Had the court reviewed the legislative history to determine Congressional purpose, it would have reached a different

result. The legislative history demonstrates that the explicitly stated purpose for enacting Section 402(a)(22) was to affect agency and recipient behavior so as to ensure correct program payments. There is no evidence of Congressional concern to alter who should bear the costs of a reversed injunction.

The most extensive discussion of the section's purpose appears in the Report of the Senate Finance Committee, S. Rep. No. 97-139, 97th Cong., 1st Sess., pp. 519-520, reprinted in [1981] U.S. Code Cong. & Admin. News, 396, 785-86. This report first summarizes the pre-1981 law and its limitations on correcting errors:

> Present law--There are no provisions in the statute specifying how States are to treat overpayments and underpayments. In practice, States are given the option of recouping overpayments, but are not required to do so...

The report next describes the Committee amendment:

> The Committee amendment would require States to take prompt

> action to correct both overpayments and underpayments...

It then explains the rationale for the policy revision:

> The Committee believes that a policy of insuring the correctness of payment is crucial if the AFDC program is to continue to have public support. By requiring the correction of both overpayments and underpayments, the Committee believes that recipients and welfare agencies alike will be assuring the accuracy of administration. Although States have been working to improve their administrative procedures and to reduce errors, the Committee notes that in the quality control measuring period April-September 1979, 23.5 percent of AFDC cases involved error. The total number of cases involving incorrect payments was 779,100....(Emphasis added.)

This discussion describes the errors to be addressed in terms of cases that would constitute errors for purposes of Quality Control, a concern which is wholly unrelated to treatment of payments made under court order.

Another Senate Finance Committee publication similarly emphasized that the purpose of Section 402(a)(22) was to create

incentives for both careful state agency practices and accurate recipient reporting:

> A mandatory recovery policy would act as an incentive for recipients to keep the welfare agency informed about their situation, and require States to take responsibility for correcting underpayments.

"Proposals for Reductions in Spending Programs under the Jurisdiction of the Senate Finance Committee," Senate Finance Committee Print No. 97-5, 97th Cong., 1st Sess., at p. 41.

Richard Schweiker, the HHS Secretary at the time of the introduction of the legislation, also explained the purpose of Section 402(a)(22) in the same terms: "As another matter of personal responsibility, we will require that AFDC overpayments be repaid. At the same time, of course, we will require States to make good on underpayments." Testimony before the Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, House of Representatives, March 11, 1981.

That the provision's goal was to reduce recipient and agency errors is also reflected in Congress' choice to mandate correction of underpayments as well as overpayments. Had the provision's primary goal been the saving of money, Congress would presumably not have mandated correction of underpayments. By directing states to correct both underpayments and overpayments, Congress maximized incentives for correct payments for both recipients and state agencies.

In sum, the stated purpose of Section 402(a)(22) was to make mandatory what had been permissive state practices regarding the correction of overpayments and underpayments so as to establish nationwide the same incentives for encouraging recipient and agency accuracy in welfare administration. This goal is not advanced by extending the overpayment recovery provision to payments made under a subsequently reversed court order. It is axiomatic that an

injunction is an order of the court and not attributable to the parties. Detroit Newspaper Publishers Assn. v. Detroit Typographic Union, 471 F.2d 872, 876 (6th Cir. 1972), cert. denied, 411 U.S. 967 (1973). When an injunction is in place, neither the state nor the recipient are engaged in erroneous conduct by complying with its terms.

This record demonstrates that the apparent "plain meaning" construction of overpayment relied on by the court of appeals is at odds with the legislative record. This evidence should have been taken into account by the Ninth Circuit but was not.

A court's duty is to determine what Congress intended to accomplish. "As in all cases of statutory construction, [a court's] task is to interpret the words of...statutes in light of the purposes Congress sought to serve." Chapman v. Houston Welfare Rights Org., 441 U.S. 600,

608 (1979).

The court of appeals' approach reflects the troubling results that emerge from an expansive application of the plain meaning rule. Certainly, an important goal of the plain meaning rule is to acknowledge that the best evidence of what Congress meant is what it said, and that courts should not reach contrary results through relying on obscure aspects of the legislative record. On the other hand, an expansive application of the rule may, and in this instance did, lead a court to construe a statute to obtain a result never contemplated by Congress.

A grant of certiorari will provide an opportunity for the Court to correct an erroneous decision that misapplies the plain meaning rule of statutory construction to reach a decision that is contrary to the intent of Congress.

CONCLUSION

Because of the significance of the court of appeals' holding on the administration of the AFDC program and on the equitable jurisdiction of the federal courts, plaintiffs respectfully request this Court to grant a writ of certiorari.

May 5, 1988

Respectfully submitted,

MARK AARONSON
ATTORNEY OF RECORD
San Francisco Lawyers Committee for Urban Affairs

RICHARD A. ROTHSCHILD
MARK GREENBERG
Western Center on Law and Poverty, Inc.

MARILYN KAPLAN
Orrick, Herrington & Sutcliffe

Supreme Court, U.S.
FILED
MAY 6 1988
JOSEPH F. SPANIOL, JR.
CLERK

87 1867

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

SANDRA TURNER, ET AL.

PETITIONERS

v.

LINDA MCMAHON, OTIS R. BOWEN, ET AL.

RESPONDENTS

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MARK N. AARONSON
ATTORNEY OF RECORD
San Francison Lawyers Committee
for Urban Affairs
301 Mission St., Suite 400
San Francisco, Calif. 94105
(415) 543-9444

MARK GREENBERG
RICHARD A. ROTHSCHILD
Western Center on Law and Poverty, Inc.
3535 W. 6th St.
Los Angeles, Calif. 90020
(213) 487-7211

MARILYN KAPLAN
Orrick, Herrington & Sutcliffe
600 Montgomery St.
San Francisco, Calif. 94111
(415) 392-1122

TABLE OF CONTENTS

Page

Opinion, United States Court of Appeals for the Ninth Circuit, Turner v. McMahon, October 16, 1987 1

Order Granting Summary Judgment and Injunctive Relief, United States District Court for the Northern District of California, June 18, 1986 30

Judgment, United States District Court for the Northern District of California, June 18, 1986 54

Order of Clarification, United States District Court for the Northern District of California, August 27, 1986 55

Judgment, United States Court of Appeals for the Ninth Circuit, Turner v. McMahon, October 16, 1987 . .56

Order Denying Petition for Rehearing and Suggestion for Rehearing En Banc, United States Court of Appeals for the Ninth Circuit, Feburary 22, 1988 . .58

42 U.S.C. §602(a)(22) 62

45 C.F.R. §233.20(a)(13) 65

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SANDRA TURNER, DEBRA SCRUGGS, and JERRYLEAN BAKER, on behalf of themselves and all others similarly situated, Plaintiffs-Appellees, v. LINDA MCMAHON, individually and in her official capacity as the Director of the Department of Social Services of the State of California; DEPARTMENT OF SOCIAL SERVICES OF THE STATE OF CALIFORNIA; JESSE HUFF, individually and in his official capacity as Director of the Department of Finance of the State of California; and the DEPARTMENT OF FINANCE OF THE STATE OF CALIFORNIA; Defendants/Third-Party Plaintiffs-Appellants, v. OTIS R. BOWEN, Secretary of Health and Human Services, Third-Party Defendant.	No. 86-2321 D.C. No. CV-81-4457-TEH

SANDRA TURNER; DEBRA SCRUGGS; JERRYLEAN BAKER, on behalf of themselves and all others similarly situated,	)	
Plaintiffs-Appellees,	)	
v.	)	
OTIS R. BOWEN, Secretary of Health and Human Services,	)	No. 86-2490 D.C. No. CV-81-4457-TEH
Third-party-Defendant-Appellant,	)	
v.	)	
LINDA MCMAHON, individually and in her official capacity as the Director of the Department of Social Services of the State of California,	)	
Defendant-third-party-Plaintiff.	)	

SANDRA TURNER, DEBRA SCRUGGS, and JERRYLEAN BAKER, on behalf of themselves and all others similarly situated, Plaintiffs-Appellees, v. OTIS R. BOWEN, Secretary of Health and Human Services, Third-Party Defendant, and LINDA MCMAHON, individually and in her official capacity as the Director of the Department of Social Services of the State of California; JESSE HUFF, individually and in his official capacity as Director of the Department of Finance of the State of California; and the DEPARTMENT OF FINANCE OF THE STATE OF CALIFORNIA, Defendant-third-party-Plaintiff-Appellant.	No. 87-1519 D.C. No. CV-81-4457-TEH OPINION

Argued and Submitted
September 16, 1987
San Francisco, California

Filed October 16, 1987

Before: Herbert Y.C. Choy, Arthur L. Alarcon and Diarmuid F. O'Scannlain, Circuit Judges.

Opinion by Judge Alarcon

Appeal from the United States District Court from the Northern District of California (San Francisco)
Thelton E. Henderson, District Judge, Presiding

SUMMARY

Administrative Law

Appeal from judgment. Reversed in part, vacated in part.

In this class action by appellee AFDC recipients, the issue is whether the appellant State should, when calculating AFDC eligibility and benefits, base its calculations on the gross or net income of a working recipient after mandatory payroll deductions. The district court issued a permanent injunction enjoining it from implementing its new regulations and ordered the State not to treat funds withheld for mandatory payroll deductions as income to AFDC recipients. The injunction was stayed. The Secretary then ordered states participating in the AFDC program to recover overpayments made to

AFDC recipients where mandatory payroll deductions had been disregarded in calculating benefits and eligibility. Appellees had their AFDC benefits calculated without treating mandatory payroll deductions as income during the period when the permanent injunction was implemented and when the stay was issued. The State then initiated measures for recoupment of the AFDC monies paid during this period under 42 U.S.C. §602(a)(22). Appellees thereafter filed a supplemental complaint in federal court to prohibit any recoupment by the State of AFDC benefits as overpayments paid pursuant to the court's injunction. The district court granted the appellees' motion for summary judgment and request for an injunction. The State was enjoined from recouping funds that were paid to AFDC recipients in California from the date the district court issued its permanent injunction until the date the Secretary's request for a stay of the

district court's injunction. The district court examined the legislative history of section 602(a)(22) and concluded that recoupment of overpayments was designed solely to correct overpayments resulting from recipient or agency error. The court also rejected the State's argument that it had a common law right to recoupment. The district court enjoined the State from recouping AFDC overpayments and the Secretary from taking any action declaring the State to be in violation of federal law.

[1] The plain language of section 602(a)(22) mandating recovery of any overpayment does not distinguish between classes of overpayments that may be recouped. [2] This court has examined the legislative history for the sole purpose of determining whether there is a clearly expressed intention to exclude recoupment of overpayments made pursuant to a court order. There is none. [3] This court will

consider appellants' argument concerning the statute's constitutionality raised on appeal even though not raised below because the issue of appeal is purely one of law that is both central to the case and important to the public. [4] California has a statutory scheme which permits current AFDC recipients to obtain an administrative hearing and judicial review of a determination made concerning overpayments. Thus, appellees' argument that section 602(a)(22) is unconstitutional as applied is without merit. [5] A state may seek recovery of an overpayment under its common law right of restitution or by filing an action under state law pursuant to section 602(a)(22). [6] Because the judgment on the merits must be reversed, appellees are no longer a prevailing party and the award of attorney's fees must be vacated.

COUNSEL

Mark N. Aaronson and Richard A. Rothschild, San Francisco, California, for the plaintiffs-appellees.

Richard A. Olderman, Department of Justice, Washington D.C. and John J. Klee, Jr., Deputy Attorney General, San Francisco, California, for the defendants/third-party plaintiffs-appellants.

OPINION

ALARCON, Circuit Judge:

The dispositive issue on appeal is whether section 402(a) of the Social Security Act, 42 U.S.C. §602(a)(22) (Supp. III 1985) permits a state to recoup overpayment of money paid to Families with Dependent Children (hereinafter AFDC) recipients under compulsion of an erroneous court order subsequently reversed by the Supreme Court. We hold that a state is authorized to do so under the plain

language of the statute, and reverse the judgment of the district court.

Defendants-appellants Linda McMahon, Director of the Department of Social Services of the State of California (hereinafter State) and third party defendant-appellant Otis R. Bowen, Secretary of Health and Human Services (hereinafter Secretary or collectively referred to as appellants) appeal from the district court's orders granting plaintiffs-appellees Sandra Turner and other certified class members (hereinafter appellees) injunctive relief, summary judgment, and attorney's fees. In this consolidated appeal, appellees are past, present and future AFDC recipients who have been or will be affected by appellants' policy of considering mandatory payroll deductions as income in calculating grants and determining eligibility.

FACTS

A. Background

In 1981, a class of AFDC recipients in California brought suit in federal court asserting that the State had improperly calculated the amount of benefits due AFDC recipients who work in implementing directions issued by the Secretary. The primary issue raised was whether the State should, when calculating AFDC eligibility and benefits, base its calculations on the gross or net income of a working recipient after mandatory payroll deductions.

In 1982, the district court issued a permanent injunction which enjoined it from implementing its new regulations and ordered the State not to treat funds withheld for mandatory payroll deductions as income to AFDC recipients. Turner v. Woods, 559 F.Supp. 603 (N.D. Cal. 1982). We affirmed the district court's order. Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983).

The injunction was stayed by Justice Rehnquist, acting as Circuit Justice for

the Ninth Circuit. Heckler v. Turner, 468 U.S. 1305 (1984) (in chambers). The Supreme Court, in a unanimous decision, reversed this court's judgment. Heckler v. Turner, 470 U.S. 184 (1985).

The Secretary thereafter issued Action Transmittal No. SSA-AT-85-10 on April 30, 1985. The Action Transmittal ordered states participating in the AFDC program, including California, to recover overpayments made to AFDC recipients where mandatory payroll deductions had been disregarded in calculating benefits and eligibility. The appellees had their AFDC benefits calculated without treating mandatory payroll deductions as income during the period between July 29, 1982, when the permanent injunction was implemented, and August 10, 1984, when the stay was issued by Justice Rehnquist.

The State then initiated measures for recoupment of the AFDC monies paid during this period under 42 U.S.C. §602(a)(22).

Section 602(a)(22) provides in pertinent part:

> A State plan for aid and services to needy families with children must--
>
> . . .
>
> (22) provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of--
>
> > (A) an overpayment to an individual who is a current recipient of such aid (including a current recipient whose overpayment occurred during a prior period of eligibility), recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member, except that such recovery shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income (without application of paragraph (8)), is less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income (and, in the case of an individual to whom

> no payment is made for a month solely by reason of recovery of an overpayment, such individual shall be deemed to be a recipient of aid for such month);
>
> (B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family;....

B. Nos. 86-2321, 86-1490

Appellees thereafter filed a supplemental complaint in federal court to prohibit any recoupment by the State of AFDC benefits as "overpayments" paid pursuant to the court's injunction. Appellees argued that monies paid to AFDC recipients pursuant to a court order were not "overpayments" within the meaning of section 602(a)(22). The State asserted that under section 602(a)(22) and the common law, overpayments made under a subsequently overturned court order could be recovered. The State filed a third

party complaint against the Secretary claiming that if the State was enjoined from recovering overpayments, the Secretary should be prohibited from imposing sanctions for failure to comply with the recoupment provisions of section 602(a)(22).

The parties filed cross-motions for summary judgement. On June 18, 1986, the district court granted the appellees' motion for summary judgment and request for an injunction. The State was enjoined from recouping funds that were paid to AFDC recipients in California from July 29, 1982, the date the district court issued its permanent injunction, until August 10, 1984, the date Justice Rehnquist granted the Secretary's request for a stay of the district court's injunction.

The district court examined the legislative history of section 602(a)(22) and concluded that recoupment of overpayments was designed solely to correct

overpayments resulting "from recipient or agency error." The court reasoned that "[n]othing in this legislative history suggests Congress intended to require states to recover funds paid pursuant to a court-ordered injunction." Thus, "[i]n the absence of any error or lack of diligence by either plaintiffs or the state, the OBRA amendments do not require--or empower--the state to recover the funds paid under the injunction." The court also rejected the State's argument that it had a common law right to recoupment.

The district court enjoined the State from recouping AFDC overpayments and the Secretary from taking any action declaring the State to be in violation of federal law.

C. No. 87-1519

No. 87-1519 is a related appeal challenging the award of attorney's fees to appellees under 42 U.S.C. §1988 as prevailing parties on the recoupment issue.

This appeal was consolidated with the appeals nos. 86-2321 and 86-2490.

Appellees sought $35,252 in attorney's fees against the State. The State contended the appellees were not entitled to fees, and alternatively, the fees they claimed were excessive. The court determined that the hourly rate and the number of hours claimed were reasonable for work performed on the merits. The district court reduced the number of hours in its award for time spent on the fee issue. The district court awarded appellees' counsel San Francisco Lawyers' Committee for Urban Affairs $18,161 and counsel Western Center on Law and Poverty $14,990, totalling $33,781.

DISCUSSION

APPEALS NOS. 86-2321, 86-2490

I. RECOUPMENT OF AFDC FUNDS

Appellants contend that 42 U.S.C. §602(a)(22) clearly and unambiguously requires the State to recover overpayments

made to AFDC recipients. Alternatively, the Secretary contends that he is entitled to a common law right to recoupment of the AFDC overpayments.

A. Standard of Review

A district court's grant of summary judgment is reviewed de novo. Cuyamaca Meats, Inc. v. San Diego & Imperial Counties Butchers' & Food Employers' Pension Trust Fund, No. 86-6182, slip op. at 8 (9th Cir. Sept. 3, 1987). In this case, the parties agree that there are no genuine issues of fact in dispute. Therefore, "this Court need only decide whether the substantive law was properly applied." Id. The district court's construction of a statute is subject to de novo review. Barona Group of the Capitan Grande Band of Mission Indians v. American Management & Amusement, Inc., 824 F.2d 710, 717 (9th Cir. 1987).

B. The Plain Meaning of 42 U.S.C. §602(a)(22)

A court's objective when interpreting

a federal statute " 'is to ascertain the intent of Congress and to give effect to legislative will.'" Foxgord v. Hischemoeller, 820 F.2d 1030, 1032 (9th Cir. 1987) (quoting United States v. Taylor, 802 F.2d 1108, 1113 (9th Cir. 1986), cert. denied, 107 S.Ct. 1309 (1987)). "'The most persuasive evidence of . . . [congressional] intent is the words selected by Congress.'" Foxgord, 820 F.2d at 1032 (quoting Director, Office of Workers' Compensation Programs v. Forsyth Energy, Inc., 666 F.2d 1104, 1107 (7th Cir. 1981)). "We begin with the statute's language, and '[a]bsent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.'" Foxgord, 820 F.2d at 1032 (quoting Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980)) (citations omitted).

The determinative statute is 42 U.S.C. §602(a)(22). The relevant language

provides that "the State agency will promptly take all necessary steps to correct any overpayment . . . of aid under the State plan...." 42 U.S.C. §602(a)(22) (emphasis added). The Secretary's regulation broadly defines overpayment as follows: "Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible." 45 C.F.R. §233.20(a)(13)(i) (1986).

The district court did not expressly analyze the statute's plain meaning, but simply examined the statute's legislative history. The appellees summarily dismiss Congress' language as not clear on its face, and proceed to a discussion of the legislative history. Appellees have failed to meet their burden of pointing to any express language in the legislative history which would preclude the State from filing an action for recoupment or imposing a set

off where overpayment has been compelled by an erroneous court order. Foxgord, 820 F.2d at 1032.

[1] The plain language of section 602(a)(22) mandating recover of "any overpayment" does not distinguish between classes of overpayments that may be recouped. See Tambe v. Bowen, 662 F.Supp. 939, 941 (W.D.N.Y. 1987) ("the language of the statute [§602(a)(22)] is clear in providing that 'all' necessary steps shall be taken to correct 'any' overpayment.... This broad language is not tempered or constricted by any limitation whatsoever"). Instead, use of the adjective "any" indicates that Congress intended that overpayments must be recouped without restriction. A literal reading of the statutory language is supported by the Secretary's construction of the statute he is required to enforce. As set forth above, 45 C.F.R. §233.20(a)(13)(i) broadly defines an overpayment as money received

which exceeds the amount the individual was entitled to receive. The regulation imposes no restriction on the right of a state to recoup any overpayment. The Secretary's interpretation of a statute is entitled to great deference. Department of Health, State of Cal. v. Secretary of Health & Human Servs., 823 F. 2d 323, 326 (9th Cir. 1987); Miller v. Bowen, 789 F.2d 678, 681 (9th Cir. 1986) (we give "great deference" to the Secretary's interpretation of a statute in issuing regulations).

[2] The record shows that the State made AFDC payments to appellees during the period of the permanent injunction which exceeded the amount the appellees were entitled to receive under the AFDC program. The statute does not distinguish overpayments made as the result of a court order. Appellees have not demonstrated that Congress intended to exclude recoupment of court ordered overpayments. We have

examined the legislative history for the sole purpose of determining whether, notwithstanding the plain language of the statute, there is a clearly expressed intention to exclude recoupment of overpayments made pursuant to a court order. There is none. The district court erred in concluding that the State could not recoup AFDC payments.

II. CONSTITUTIONALITY OF THE STATUTE

Appellees also assert that if we conclude that Congress intended to permit a State to recover AFDC benefits erroneously paid pursuant to a court order, the statute would be unconstitutional as applied. Appellees claim that such an interpretation would permit a state administrative welfare agency to divest a court of its equitable powers to determine whether restitution should be ordered.

A. Failure to Raise Issue in the District Court

As a preliminary matter, we consider the Secretary's contention that appellees'

failure to challenge section 602(a)(22) on constitutional grounds in the district court precludes them from raising the issue here. We disagree.

[3] Generally, we will not consider an argument on appeal if it was not raised below. Abex Corp. v. Ski's Enterprises, Inc., 748 F.2d 513, 516 (9th Cir. 1984). We recognize an exception to this rule, however, where the issue on appeal is purely one of law that is both central to the case and important to the public. Id. Here, our consideration of the issue will not require the parties to develop new facts; this issue involves a pure question of law. Moreover, the constitutionality of section 602(a)(22) to recover AFDC monies paid to recipients presents a significant question of general impact. Under these circumstances we will exercise our discretion to consider the issue notwithstanding appellees' failure to raise it in the district court.

B. Availability of Judicial Review

The primary reason appellees contend section 602(a)(22) is unconstitutional as applied is because "[a]t no time would the state welfare agency have to pose the issue of restitution to a court." This claim is without merit.

In California, "[c]urrent and future [AFDC] grants . . . may be reduced [by the county] because of prior overpayments...." Cal. Welf. & Inst. Code §11004(c) (West Supp. 1987). Prior to effectuating any reduction of current grants to recover past overpayments, "the recipient shall be advised of the proposed reduction and of his or her entitlement to a hearing...." Id. at §11004(e). If the agency determines after a hearing that an overpayment has occurred, the county shall seek full amount of the overpayment including the amount paid while the hearing process was pending which "shall be permitted concurrently with any suit for restitution ...." Id. at

§11004(f).

Where an overpayment has been made to an individual who is no longer receiving public social services, "recovery shall be made by appropriate action under state law against the income or resources of the individual ...." Id. at §11004(i).

If the individual is dissatisfied with any action of the county department, in attempting to recoup overpayments, he may request and obtain an administrative hearing with the Department of Social Services. Id. at §10950 (West Supp. 1987). If the recipient is not satisfied with the final decision after the administrative hearing, he may file a petition for a writ of mandate seeking court review of the administrative decision under Cal. Code Civ. Proc. §1094.5, "praying for a review of the entire proceedings in the matter, upon questions of law involved in the case." Cal. Welf. & Inst. Code §10962

(West 1980).

[4] California has a statutory scheme which permits current AFDC recipients to obtain an administrative hearing and judicial review of a determination made concerning overpayments. Similarly, a former AFDC recipient is provided judicial review when the county initiates an action to collect the overpayments. Appellees' argument that section 602(a)(22) is unconstitutional as applied is without merit.

Appellees also contend that a strict interpretation of the plain language of the statute would permit Congress by implication to curtail a district court's equitable jurisdiction to fashion final relief after appellate reversal of a permanent injunction in violation of Article III of the United States Constitution. Appellees have failed to cite any authority to support this novel proposition. This argument is unpersuasive.

[5] Congress has not limited a district court's equitable jurisdiction in permitting recovery of any overpayments under section 602(a)(22). Instead, it expressly expanded the remedies available to recover an overpayment of AFDC funds. As a result of the language used by Congress, a state may seek recovery of an overpayment under its common law right of restitution, see Arkadelphia Milling Co. v. St. Louis Southwestern Ry. Co., 249 U.S. 134, 145 (1919) ("a party against whom an erroneous judgment or decree has been carried into effect is entitled, in the event of a reversal, to be restored by his adversary to that which he has lost thereby"), or by filing an action under state law pursuant to section 602(a)(22). Congress has the power under Article III of the United States Constitution to fashion new remedies, see, e.g., Declaratory Judgment Act, 28 U.S.C. §§2201, 2202, or to limit the applicability of the traditional

equitable remedies available in the district court, see, e.g., Anti-Injunction Act, 29 U.S.C. §§101-115. Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240 (1937) (Congress may create and improve, as well a abolish or restrict, remedies available in federal court).

APPEAL NO. 87-1519

ATTORNEY'S FEES UNDER 42 U.S.C. §1988

[6] The district court awarded attorney's fees to appellees pursuant to the Civil Right Attorneys' Fees Award Act of 1976, 42 U.S.C. §1988. Section 1988 authorizes an award to a "prevailing party" in an action filed pursuant to under 42 U.S.C. §1983. We have concluded that the judgment on the merits must be reversed. Appellees are no longer a "prevailing party." Accordingly, the award of attorney's fees must be vacated. Ladnier v. Murray, 769 F.2d 195, 200 (4th Cir. 1985); Harris v. Pirch, 677 F.2d 681, 689 (8th Cir. 1982).

CONCLUSION

The district court's judgments in appeals nos. 86-2321 and 86-2490 is REVERSED. The judgment in 87-1519 is VACATED.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SANDRA TURNER, et al.,	)	
	)	
Plaintiffs.	)	
	)	No. C 81-4457 TEH
v.	)	
	)	
LINDA MCMAHON, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

ORDER GRANTING SUMMARY JUDGMENT AND INJUNCTIVE RELIEF

This matter is before the court on cross-motions for summary judgment on plaintiff's first supplemental cause of action. Plaintiffs have also moved for injunctive relief. After considering the memoranda and oral arguments offered by both parties, the court hereby GRANTS summary judgment in favor of plaintiffs and also GRANTS injunctive relief against the state defendants and federal third-party

defendant.

Procedural History

This case has returned to this court after a ruling by the Supreme Court. In July 1982, this court entered a permanent injunction against the state defendants prohibiting them from treating mandatory payroll deductions as "income" when calculating benefit levels for AFDC recipients. After the Ninth Circuit upheld this injunction, the Supreme Court reversed and remanded to the Court of Appeals. Heckler v. Turner, ____U.S.____, 105 S.Ct. 1138 (1985). Pursuant to this remand, the Ninth Circuit reversed the original judgment of this court.

The federal government subsequently ordered the state to begin recoupment of the additional AFDC payments made under the terms of the permanent injunction. For those persons still receiving AFDC, the federal government has directed the state to reduce the recipients' monthly checks

until the state recovers the funds paid under the injunction. To recover from former recipients who no longer receive benefits, the state is apparently contemplating bringing a multitude of individual lawsuits.

In response to this plan, plaintiffs asked the court to enter either a protective order or an injunction prohibiting the state from pursuing the funds paid under the injunction. The state challenged the jurisdiction of the court to consider this request for relief under the ambit of this case. The federal government filed an amicus curiae brief raising the same contentions. On March 27, 1986, the court issued an order which held the court did have jurisdiction. This order also granted plaintiffs' motion to file a supplemental complaint to plead the cause of action for injunctive relief against the state. The state subsequently answered the supplemental complaint and named the

federal government as third-party defendant. The parties then filed cross motions for summary judgment and submitted the matter on the papers.

Can The State Recoup Payments Ordered By The Court?

The state argues that it is entitled- indeed required by the federal government - to recover the monies paid pursuant to this court's injunction because these funds constituted "over-payments" as that terms is used in 42 U.S.C. § 602(a)(22). The Supreme Court holding in Turner, supra., meant that plaintiffs could not exclude mandatory payroll deductions from their eligibility calculations and thus were not entitled to receive the funds ordered by this court. Since 42 U.S.C. §602(a)(22) requires states to "promptly take all necessary steps to correct any overpayment or underpayment of aid . . .", the state is forced to attempt to recoup the benefits to which plaintiffs were not entitled.

This court addressed this issue once

before in this case, although in a slightly different context. As the court said at the time, "[a] necessary premise of defendant's argument is that aid amounts restored by court order . . . constitute 'over-payments.' However, the legislative history accompanying [the statute] demonstrates that the 'overpayments' envisioned by Congress did not include aid amounts restored by court order." Turner v. Woods, 559 F.Supp. 603, 621, n.2 (N.D.Cal. 1982).

Plaintiffs claim this holding serves as the "law of the case" and binds the parties in this instance as well. See e.g. Moore v. Matthews, 682 F.2d 830, 832 (9th Cir. 1982). Defendants argue however, that the court's holding applied to court ordered payments resulting from constitutionally defective notices and is not the "law of the case" on that part of the action dealing with the mandatory payroll deductions. Defendants further argue that the recent Supreme Court decision in Atkins

v. Parker, 53 U.S.L.W. 4686 (June 4, 1985), calls into question the court's holding on the constitutionality of the notices and thus abrogates the binding effect of the court's holding. Although the court believes its prior ruling still does apply and subsequent events have not undermined its vitality, this issue is of important enough to deserve more explication than that given in a footnote in the court's prior opinion.[1]

This statute became law under Section 2318 of the Omnibus Budget Reconciliation Act of 1981(OBRA). Defendants argue the purpose of the Act was to reduce government spending and cut the federal deficit. Prior to the passage of the Act, the states

---

[1]/ Defendants assert the theory of "law of the case" is inapplicable here as they appealed this court's prior ruling and then settled the conflict before a ruling by the appellate court. Since the court has chosen to elucidate its prior ruling, it is not necessary to decide whether a holding which is appealed and then settled is nevertheless binding as the "law of the case."

had discretion over whether or not to collect "over-payments" made to recipients. Section 2318 removed this discretion and made collection of "overpayments" mandatory. As a result, the Department of Health and Human Services promulgated the regulation at 45 C.F.R. 233.20(a)(13)(i) which defines an "overpayment" as "a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible." This regulation also requires the state to recover "overpayments" from both current recipients and from individuals no longer receiving benefits.

Defendants assert that under this definition of "overpayments", the payments made pursuant to this court's order are subject to recovery under 42 U.S.C. § 602(a)(22). The federal government insists that since the Department assisted in preparing the OBRA amendments relative to

AFDC, the court should defer to the Department's interpretation of the statute. Miller v. Youakim, 404 U.S. 125, 144 (1979).

The court recognized that where Congress has not directly addressed the precise statutory question at issue, a court should give deference to a "reasonable interpretation" of that statute by the agency responsible for its implementation. Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., ___U.S.___, 104 S.Ct. 2778, 2781-82 (1984). However, as the Ninth Circuit reiterated in an opinion issued after Chevron, a court may reject an agency's interpretation of the statute if "there are compelling indications that it is wrong." Livermore v. Heckler, 743 F.2d 1396, 1404 (9th Cir. 1984)(quoting from Red Lion Broadcasting Co. v. Federal Communications Commission, 395 U.S. 367, 381 (1969). The court believes such compelling indications are present here.

It is true the main overall purpose of OBRA was to reduce government spending. See S.Rep. No. 97-139, 97th Cong., Ist Sess. 2-4, [hereinafter S.Rep.], reprinted in U.S.Code Cong. & Ad.News. 396, 397-98, [hereinafter Cong. & Ad.News.]; Omnibus Budget Reconciliation Act of 1981, Pub.L. No. 97-35, 97 Stat. 357. Nevertheless, the legislative history of the Act also indicates the Congressional purpose behind enactment of Section 2318 was not - as urged by the federal third-party defendants (see federal government's Summary of Oral Argument, December 5, 1985, at p. 3) - to save as much money as possible by recovering all AFDC payments made in excess of the statutorily prescribed amount. The purpose of the amendment was to require states to recover "overpayments" resulting from recipient or agency error, even if the funds must come through a reduction in current AFDC benefit payments.

All available legislative history for

Section 2318 makes this Congressional purpose clear. Both the final Report of the Senate Finance Committee and the original committee Proposals for Reductions in Spending emphasize the twin goals of (1) encouraging recipients and state agencies to take greater responsibility to avoid "overpayments" and (2) recouping any such "overpayments" from current AFDC benefits if possible.

The final Report of the Senate Finance Committee expresses this purpose most forcefully. See S.Rep. at 520; Cong. & Ad.News. at 786. The Report first discusses the law in effect at the time, noting that "[s]tates are given the option of recouping overpayments, but are not required to do so." The Report then notes that even if a state does decide to try to recover an "overpayment,"

> "if an individual has no income or countable resources in excess of the AFDC payment, there can be no recovery of overpayments. There is one exception. Recoupment may be made when overpay-

> ments are caused by the recipient's willful withholding of information concerning his income, resources, or other relevant circumstances."

The Report next identifies the changes encompassed in the proposed amendment. States would no longer have the option of refraining from attempting to recover "overpayments." In addition, the new law would eliminate the prohibition on recovering overpayments from recipients whose only resource was their current AFDC payment. The states now would have the right to "offset the overpayment against the AFDC payment for which the individual continued to be eligible."

Finally, the Report explains the legislative purpose behind these amendments and states:

> "[t]he committee believes that a policy of insuring the correctness of payment is crucial if the AFDC program is to continue to have public support. By requiring the correction of both overpayments and underpayments, the committee believes that recipients and welfare agencies alike will be encouraged to take

> greater responsibility for assuring the accuracy of administration. Although States have been working to improve their administrative procedures and to reduce errors, the committee notes that [a significant percentage of cases still involve errors in payment]." (emphasis added)

This explicit language - which provides the only official legislative history for Section 2318 - firmly indicates that Congress' concern in amending the AFDC statute in 1981 was to strengthen administrative procedures for recovering excess payments made to recipients as a result of agency and recipient error. Earlier comments by the Senate Committee on Finance reinforce this conclusion. In the Proposals for Reductions in Spending Programs Under the Jurisdiction of the Senate Finance Committee issued three months before the passage of OBRA, the committee stated that:

> "[a] mandatory recovery policy would act as an incentive for recipients to keep the welfare agency informed about their situation, and require States to

> take responsibility for correcting underpayments." Senate Finance Comm. Print 97-5, at p. 41 (April 1981).

Nothing in this legislative history suggested Congress intended to require states to recover funds paid pursuant to a court-ordered injunction. In this action, the court determined plaintiffs were legally entitled to receiver higher benefit levels and ordered the state to provide these additional funds. Although the Supreme Court later overturned this court's order, this reversal only meant that this court reached a mistaken interpretation of the law. Payment of higher benefit levels during the pendency of this injunction did not constitute either recipient or agency error. "Neither recipients nor welfare agencies have the power to correct 'over-payments' resulting from court order." Turner v. Woods, supra. In the absence of any error or lack of diligence by either plaintiffs or the state, the OBRA amend-ments do not require - or empower - the

state to recover the funds paid under the injunction. Such recoupment would do nothing to "encourage[] . . . greater responsibility for assuring the accuracy of administration" of the AFDC program, S.Rpt., supra., and thus do not fall within the reach of Section 2318.

For these reasons, the court finds that payments made pursuant to an injunction which is subsequently reversed are not "overpayments" under 42 U.S.C. 602(a)(22) and defendants do not have statutory authority to recoup the payments made under this court's injunction.[2]

---

[2]/ The parties also argued at length about the import of the actions of Washington State Department of Social and Health Services concerning recoupment of funds paid under a similar injunction. Plaintiffs contend these actions are relevant to the consistency of application of regulations by the Department of Health and Human Services. As this matter was raised for the first time at oral argument, and the parties were unable to give the court a full explanation about the arrangements between the state and the federal government, the court did not consider this evidence in reaching its decision.

Equitable Arguments

Although the federal government rests its argument solely on statutory grounds, the state defendants have also advanced equitable arguments in support of recoupment. The state raised these issues despite the fact that it intended to recoup these payments - as ordered by the federal government - under the statutory authority allegedly provided by 42 U.S.C. §602(a)(22). These equitable arguments are normally relevant only in the context of a state action for recovery for unjust enrichment or for damages resulting from an improperly issued injunction. However, the state has not brought such an action before this court; it raised these issues for the first time in response to plaintiffs' motion for injunctive relief. Nevertheless, in an effort to promote complete resolution of the issues before the court, the court is prepared to discuss the equities of the situation before it.

The state asserts the Supreme Court decision in Arkadelphia Co. v. St. Louis Ry. Co., 249 U.S. 134 (1919) should control the court's finding in this case. In Arkadelphia, a state railroad commission had established intrastate freight and passenger rates. The plaintiffs (two railroad companies subject to the tariffs) obtained a permanent injunction from the federal district courts enjoining enforcement of these rates. The Supreme Court reversed and ordered plaintiffs to restore the "excess" rates collected to the customers who had paid them. In so ruling, the court relied on the equitable principle that "a party against whom an erroneous judgment or decree has been carried into effect is entitled, in the event of a reversal, to be restored by his adversary to that which he has lost thereby." 249 U.S. 145.

Although the court finds this language instructive, it does not believe it is

dispositive of the court's decision in this case. First, the case here is in a significantly different posture than was the matter before the Supreme Court. In Arkadelphia, the lower courts had required the entry of a bond upon the issuance of the preliminary injunction. When the injunction was made final, the courts ordered the bond released subject to "any changed conditions as to the facts, equities or rights that may hereafter take place or arise." 249 U.S. 139. When the Supreme Court reversed the injunction, the lower courts ordered the "excess" charges returned to those who had paid them and the Supreme Court affirmed using the language cited above. In this case, however, the court never required plaintiffs to enter a bond; as the Supreme Court reiterated recently, a party injured by the issuance of an injunction later determined to be erroneous has no action for damages in the absence of a bond. W.R. Grace and Co. v.

Local Union 759, 461 U.S. 757, n.14 (1983).

Moreover, the language cited above from Arkadelphia does not state a per se rule of equity. The Supreme Court stated that this equitable principle was one that is "proper to be adopted in an equitable proceeding", 249 U.S. 145; the Court did not say it was the only principle of equity for a court to consider in like situations. As Justice Cardozo later stated for the Court, "[r]estitution is not of mere right. It is ex gratia, resting in the exercise of a sound discretion, and the court will not order it where the justice of the case does not call for it . . ." Atlantic Coast Line Ry. Co. v. Florida, 295 U.S. 301, 310 (1935)(citations omitted). Thus, this court must consider all of the equities of the case in determining whether recoupment is appropriate.

The court finds the equities weigh in favor of plaintiffs. The affidavits submitted by plaintiffs indicate the severe

hardship that would be suffered by those plaintiffs who still receive AFDC benefits. There is some dispute between the parties about the amount of recoupment to be suffered by those plaintiffs who submitted affidavits. Regardless of which figures the court accepts, it is clear that many individual plaintiffs would be forced to endure for several months a ten percent reduction in their current subsistence level of income. As the affidavits demonstrate, the impact on individual families would be near catastrophic. Defendants argue that the severity of the results is a consequence of the "unreasonably high" rents these families pay. The court finds this explanation unpersuasive and unresponsive both to the realities of the housing market in the Bay Area and to the difficulties faced by families trying to survive on an AFDC income. There is no governmental interest in depriving class members of funds needed

to prevent eviction and malnutrition.

In response to these concerns, defendants assert that the government has paid out millions of dollars which it wishes to recover. Once again the parties dispute the amount of funds involved, but all agree that the sum is very substantial. Although the court is cognizant of the universal concern about the financial status of our governments, the court finds the harm that would be suffered by the government in the absence of recoupment is less severe than that to be suffered by individual plaintiffs should recoupment proceed. The government has already expended these funds and has weathered the difficulties caused by the issuance of the wrongful injunction. In contrast, plaintiffs' difficulties would begin with the recoupment and "it is extremely unlikely that AFDC recipients will have budgeted for the return of funds granted them by court order." Turner v. Woods, 559

F.Supp. at 621 (citing Goldberg v. Kelly, 397 U.S. 254, 266 (1970)).[3]

In addition, the court finds it relevant that plaintiffs brought the original action in good faith on a question of law which was in dispute. see Greenwood County v. Duke Power Co., 107 F.2d 484, 489 (4th Cir. 1939), cert. denied 309 U.S. 667 (1940). Defendants have suggested the court should order recoupment as a means of encouraging public interest lawyers to "think twice" about bringing class actions to expand the level of benefits received by

---

[3]/ The parties have not submitted any evidence to the court to define the equities of attempting to recoup from plaintiffs who are no longer recipients of AFDC. As these individuals may now have significantly improved financial conditions, the equities may weigh differently in their situation. As this order prohibiting recoupment is based on the fact that the court ordered benefits were not "overpayments" under the statute, the court need not reach a determination on the balancing of the equities for these plaintiffs. The above discussion on the equities of recouping from current AFDC recipients is offered only as guidance to the parties should this matter come before the court once again.

their clients. The court believes this argument does not do credit to the government. It is the responsibility of attorneys to ensure their clients enjoy all of the rights and privileges granted by statute. It has been the court's experience that attorneys acting on behalf of clients receiving government assistance perform their roles with the same skills, integrity and good faith demonstrated by the most respected members of the legal profession. The suggestion that the court base its decision on a desire to discourage this part of the bar from bringing "law reform" suits is both inappropriate and unwarranted.

For the reasons stated above, the court finds the equities of the case do not justify recoupment of benefits paid to plaintiffs under this court's original injunction.

Conclusion

For all of the reasons articulated

above, and good cause appearing, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for summary judgment is GRANTED. The motions for summary judgment of state defendants and federal third-party defendant are hereby DENIED.

2. The state defendants are hereby ENJOINED from terminating, suspending or reducing AFDC assistance grants to any AFDC recipient for the purpose of recouping benefits paid pursuant to this court's permanent injunction of July 29, 1982.

3. The state defendants are enjoined from representing to any class member, in any manner, that payments made under this court's permanent injunction constitute "overpayments" or that class members have a duty to repay benefits paid under this injunction.

4. The federal third-party defendant is enjoined from taking any action to declare that California is out of

conformity with federal law as a result of state defendants' compliance with the terms of this order.

IT IS SO ORDERED.

Dated: June 18, 1986

[Original Signed]
THELTON E. HENDERSON
UNITED STATED DISTRICT JUDGE

U.S. DISTRICT COURT

JUDGMENT

This action came on for hearing before the Court, Honorable Judge Thelton Henderson, United States District Judge, presiding, and the issues having been duly determined and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that plaintiffs' motions for summary judgment and injunctive relief are granted.

Dated at San Francisco, California this 18th day of June, 1986.

William L. Whittaker
Clerk of Court

BY: [Original Signed]
THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SANDRA TURNER, et al.,	)	
	)	
Plaintiffs.	)	
	)	No. C 81-4457 TEH
v.	)	
	)	ORDER OF
LINDA MCMAHON, et al.,	)	CLARIFICATION
	)	
Defendants.	)	
	)	

Defendants have asked the Court to clarify certain language in its Order of June 18, 1986. After reviewing the papers originally submitted by counsel, the Court hereby deletes the language on page 13, lines 5 to 18, [App. 50, line 9 - App. 51, line 16] "Defendants . . . " and ending with " . . . unwarranted."

IT IS SO ORDERED.

Dated: August 27, 1986

[Original Signed]
THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
For the Ninth Circuit

SANDRA TURNER, DEBRA SCRUGGS, et al.,	
Plaintiffs-Appellees,	86-2321)
vs.	No. 86-2490 DC CV 81-4457 TEH
OTIS R. BOWEN, etc.,	
Third-Party Defendant.	
SANDRA TURNER; DEBRA SCRUGGS; et al.	
Plaintiffs-Appellees,	
vs.	
OTIS R. BOWEN, etc.,	
Third-Party/Defendant-Appellant.	
and	
LINDA MCMAHON, etc.,	
Defendant-third-party/Plaintiff.	

APPEAL from the United States District Court for the Northern District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern

District of California and was duly submitted.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed. Costs in this court in favor of the appellants' and against the appellees.

COST: U.S. DEPARTMENT OF JUSTICE

OPENING BRIEF	$122.20
REPLY BRIEF	41.60
SUPPLEMENTAL	20.80
EXCERPTS/RECORD	190.00
	$374.60
TOTAL.....	$374.60

Filed and entered October 16, 1987

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SANDRA TURNER, DEBRA SCRUGGS, and JERRYLEAN BAKER, on behalf of themselves and all others similarly situated, Plaintiffs-Appellees, v. LINDA MCMAHON, individually and in her official capacity as the Director of the Department of Social Services of the State of California; DEPARTMENT OF SOCIAL SERVICES OF THE STATE OF CALIFORNIA; JESSE HUFF, individually and in his official capacity as Director of the Department of Finance of the State of California; and the DEPARTMENT OF FINANCE OF THE STATE OF CALIFORNIA; Defendants/Third-Party Plaintiffs-Appellants, v. OTIS R. BOWEN, Secretary of Health and Human Services, Third-Party Defendant.	No. 86-2321 D.C. No. CV-81-4457-TEH

SANDRA TURNER; DEBRA SCRUGGS; JERRYLEAN BAKER, on behalf of themselves and all others similarly situated,	)	
Plaintiffs-Appellees,	)	
v.	)	
OTIS R. BOWEN, Secretary of Health and Human Services,	)	No. 86-2490 D.C. No. CV-81-4457-TEH
Third-party-Defendant-Appellant,	)	
v.	)	
LINDA MCMAHON, individually and in her official capacity as the Director of the Department of Social Services of the State of California,	)	
Defendant-third-party-Plaintiff.	)	

SANDRA TURNER, DEBRA SCRUGGS, and JERRYLEAN BAKER, on behalf of themselves and all others similarly situated, Plaintiffs-Appellees, v. OTIS R. BOWEN, Secretary of Health and Human Services, Third-Party Defendant, and LINDA MCMAHON, individually and in her official capacity as the Director of the Department of Social Services of the State of California; JESSE HUFF, individually and in his official capacity as Director of the Department of Finance of the State of California; and the DEPARTMENT OF FINANCE OF THE STATE OF CALIFORNIA, Defendant-third-party-Plaintiff-Appellant.	No. 87-1519 D.C. No. CV-81-4457-TEH ORDER

Appeal from the
United States District Court
from the Northern District of California
(San Francisco)
Thelton E. Henderson,
District Judge, Presiding

Argued and submitted September 16, 1987

San Francisco, California
Filed: October 16, 1987

Before: CHOY, ALARCON, O'SCANNLAIN, Circuit Judges

The panel as constituted in the above case has unanimously voted to deny the petition for rehearing. Judge Choy recommended rejection of the suggestion for rehearing in banc Judges Alarcon and O'Scannlain have voted to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for an en banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

FILED: February 22, 1988

42 U.S.C. §602(a) provides:

A state plan for aid and services to needy families with children must . . .

(22) provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of-

(A) an overpayment to an individual who is a current recipient of such aid (including a current recipient whose overpayment occurred during a prior period of eligibility), recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member, except that such recovery shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income (without application of paragraph (8)), is less than 90 percent of the amount payable under the State plan to a family of the

same composition with no other income (and, in the case of an individual to whom no payment is made for a month solely by reason of recovery of an overpayment, such individual shall be deemed to be a recipient of aid for such month);

(B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family; and

(C) an underpayment, the corrective payment shall be disregarded in determining its resources in the month the corrective payment is made and in the following month;

except that no recovery need be attempted or carried out under subparagraph (B) in any case, other than a case involving fraud on the part of the recipient, where (as determined by the State agency in accordance with criteria for determining cost-

effectiveness, and with dollar limitations, which shall be prescribed by the Secretary in regulations) the cost of recovery would equal or exceed the amount of the overpayment involved[.]

45 C.F.R. §233.20(a) provides:

(a) Requirements for State Plans. A State Plan for . . . AFDC . . . must, as specified below:

. . .

(13) Recovery of overpayments and correction of underpayments for AFDC.

(i) Specify uniform Statewide policies for recovery of overpayments of assistance, including overpayments resulting from assistance paid pending hearing decisions. Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible. (The agency may deny assistance for the corresponding payment month rather than recover if the assistance unit was ineligible for the budget month, the State becomes aware of the ineligibility when the monthly report is submitted, the recipient accurately reported the budget month's income and other circumstances, and the

assistance unit will be eligible for the following payment month.)

(A) The State must take all reasonable steps necessary to promptly correct any overpayment.

(1) Any recovery of an overpayment to a current assistance unit, including a current assistance unit or recipient whose overpayment occurred during a prior period of eligibility, must be recovered through repayment (in part or in full) by the individual responsible for the overpayment or recovering the overpayment by reducing the amount of any aid payable to the assistance unit of which he or she is a member, or both.

(2) If recovery is made from the grant, such recovery shall result in the assistance unit retaining, for any payment month, from the combined aid, income and liquid resources, (without application of section 402(a)(8) of the Act) not less than 90 percent of the amount payable under the

State plan to a family of the same composition with no other income. When a State chooses to recover at a rate less than the maximum, it must recover promptly.

(B) The State shall recover an overpayment from (1) the assistance unit which was overpaid, or (2) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or (3) any individual members of the overpaid assistance unit whether or not currently a recipient. If the State recovers from individuals who are no longer recipients, or from recipients who refuse to repay the overpayment from their income and resources, recovery shall be made by appropriate action under State law against the income or resources of those individuals.

(C) If through recovery, the amount payable to the assistance unit is reduced to zero, members of the assistance unit are still considered recipients of AFDC.

(D) In cases which have both an underpayment and an overpayment, the State may offset one against the other in correcting the payment.

(E) Prompt recovery of an overpayment: A State must take one of the following three actions by the end of the quarter following the quarter in which the overpayment is first identified:

(1) Recover the overpayment, (2) initiate action to locate and/or recover the overpayment from a former recipient, or (3) execute a monthly recovery agreement from a current recipient's grant or income/resources.

(ii) Specify uniform Statewide policies for prompt correction of any underpayments to current recipients and those who would be a current recipient if the error causing the underpayment had not occurred. Underpayment means a financial assistance payment received by or for an assistance unit for the payment month which

is less than the amount for which the assistance unit was eligible, or failure by the State to issue a financial assistance payment for the payment month to an eligible assistance unit if such payment should have been issued. Under this requirement, for purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income, or as a resource in the month paid nor in the next following month.

(iii) Paragraph (a)(13) of this section is effective for incorrect payments which are identified subsequent to September 30, 1981.

(iv) In locating former recipient who have outstanding overpayments the State should use appropriate data sources such as State unemployment insurance files, State Department of Revenue information from tax returns, State automobile registration, Bendex, and other files relating to current

or former recipients.

(v) the State must maintain information on the individual and total number and amount of overpayments identified and their disposition for current and former recipients.

(vi) The State may elect not to attempt recovery of an overpayment from an individual no longer receiving aid where the overpayment amount is less than $35. Where the overpayment amount owed by an individual no longer receiving aid is $35 or more, the State can determine when it is no longer cost-effective to continue overpayment recovery efforts, provided it has made reasonable efforts to recover the overpayment from the individual. Reasonable efforts must include notification of the amount of and reason for the overpayment and that repayment is required. States must also maintain information regarding uncollected overpayments as provided under paragraph (a)(13)(v) of this

section, to enable the State to recover those overpayments if the individual subsequently becomes a recipient. In cases involving fraud, States must make every effort to recover the overpayment, regardless of the amount.

(3)

Supreme Court, U.S.
FILED
JUL 6 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1867

In The

Supreme Court of the United States

October Term, 1987

SANDRA TURNER, ET AL.

Petitioners,

v.

LINDA McMAHON, OTIS R. BOWEN, ET AL.

Respondents.

BRIEF OF STATE RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

JOHN K. VAN DE KAMP
Attorney General
of the State of California
JOHN J. KLEE, JR.
Deputy Attorney General
Counsel of Record

350 McAllister Street
San Francisco, CA 94102
(415) 557-3611

Attorneys for State Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Until it was stayed by Justice Renquist in July 1984, the permanent injunction issued in the underlying action required the state and federal governments to pay more benefits to working AFDC recipients than they were entitled to receive under a proper reading of the law. The question presented by this appeal is whether those overpaid amounts are "overpayments" within the meaning of 42 U.S.C. § 602(a)(22), which mandates the state to take action to correct "any overpayment" of aid.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

STATEMENT 1

ARGUMENT 2

I THE EXCESS PAYMENTS RECEIVED BY PETITIONERS ARE "OVERPAYMENTS" WITHIN THE MEANING OF 42 U.S.C. § 602(a)(22) 2

II PETITIONERS' ARGUMENTS LACK MERIT 5

A. The Alleged "Withdrawal of Equitable Jurisdiction" 5

B. The Alleged "Chilling Effect" 8

C. The Alleged Lack of "Plain Meaning" .. 10

D. Petitioner's Equity Rhetoric 11

CONCLUSION 14

TABLE OF AUTHORITIES

Page

CASES:

Arkadelphia Co. v. St. Louis Ry. Co., 249 U.S. 134 (1919) 8

Bowen v. Gilliard, 483 U.S. ___, 97 L.Ed.2d 485, 107 S.Ct. 3008 (1987) 12

Hecht Co. v. Bowles, 321 U.S. 321 (1944) 6

INS v. Pangilinan, ___ U.S. ___, 48 CCH S.Ct. Bull. p. B 2801 (1988) 7

TVA v. Hill, 437 U.S. 153 (1978) 6

STATUTES:

Social Security Act, 42 U.S.C. § 602(a)(22) 1, 2, 5, 10, 11

42 U.S.C. § 603(i) 10, 11

42 U.S.C. § 1383(b) 13

OTHER AUTHORITIES:

45 C.F.R. § 233.20(a)(13) 3

No. 87-1867

In The

Supreme Court of the United States

October Term, 1987

SANDRA TURNER, ET AL.

Petitioners,

v.

LINDA McMAHON, OTIS R. BOWEN, ET AL.

Respondents.

BRIEF OF STATE RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT

This is not a difficult or complicated case. It presents no knotty constitutional issues. To the contrary, it presents solely the application of a straightforward statute to uncomplicated facts.

Section 402(a)(22) of the Social Security Act (42 U.S.C. § 602(a)(22)) requires the States to take action to recoup "any overpayment" of aid in the AFDC program. As a result of the injunction in this case which was unanimously reversed by this Court, working AFDC recipients were paid more benefits than they were entitled to receive under the statutes. The Court of Appeals

held that the excess benefits were "overpayments" within the meaning of the statute and, therefore, could be recouped by the State.

In order to find error in the Court of Appeals decision, petitioners first argue that the phrase "any overpayment" is ambiguous and must be interpreted. Petitioners then resolve the ambiguity by arguing that Congress meant the phrase "any overpayments" to mean "some, but not all, overpayments." They then come up with a result that stands the world on its head by allowing States that negligently or intentionally violate federal law to recoup overpayments but denies recoupment to a State which did nothing wrong whatsoever.

As we shall see, petitioners' attempt to use blue smoke and mirrors to create the illusion of a legitimate issue before this Court does not understand analysis.

ARGUMENT

I

THE EXCESS PAYMENTS RECEIVED BY PETITIONERS ARE "OVERPAYMENTS" WITHIN THE MEANING OF 42 U.S.C. § 602(a)(22)

Beginning in 1981, Congress has mandated the States to correct "any overpayment or underpayment of aid" in the AFDC program. 42 U.S.C. § 602(a)(22).

The words "overpayment" and "underpayment" are not difficult to understand. They have a generally accepted meaning which, we imagine, could be easily stated by most elementary school children – a person is

overpaid and receives an overpayment when he receives more money than he is entitled to receive; a person is underpaid and suffers an underpayment when he receives less money than he is entitled to receive. The determination of whether a person has been overpaid or underpaid is a simple matter of comparison – you compare the amount paid with the amount that should have been paid. If the amount received is different than the amount the person was entitled to receive, there has been an overpayment or an underpayment.

The *reason* or *cause* for the difference between the amount received and the amount that should have been received is completely irrelevant to the question of whether, in fact, there was an overpayment or underpayment. There are literally scores of reasons or causes for an overpayment or underpayment. Some are caused by or are the fault of the recipients. For example, a recipient may fail to report a change in income or family size. Some are caused by or are the fault of the federal, state or county welfare departments. For example, the federal or state departments may promulgate a regulation which does not correctly apply the federal or state statutes. Or the county welfare workers may improperly apply a regulation to a particular fact situation. Some overpayments and underpayments are not caused by or the fault of either the recipient or the welfare departments – they are inherent in the way the system works. For example, "aid-paid-pending" a "fair hearing" is an overpayment if the recipient loses the appeal. 45 C.F.R. § 233.20(a)(13). Likewise, grants based on estimated income must be corrected after the fact to reflect actual income.

Congress very wisely did not attempt to create various catagories of "overpayments" or "underpayments" based on the reason for or cause of the payment error. To the contrary, Congress mandated the correction of *"any* overpayment or underpayment."

Thus, the Court of Appeals was entirely correct in concluding that the excess payments received by petitioners were "overpayments" within the "plain meaning" of the statute.

The Court of Appeals then did what it was supposed to do, namely, examine legislative history to determine whether Congress had indicated in clear terms that the plain meaning of the statute should not control. The Court properly concluded that Congress had not indicated any such intent.

Petitioners base their congressional intent argument on the fact that overpayments caused by erroneously issued injunctions are not specifically mentioned in the committee reports. The argument does not make sense. The failure to mention a specific type of overpayment in the committee reports does not in any way demonstrate congressional intent to exclude that type of overpayment from the phrase "any overpayment." There are many types of overpayments not specifically mentioned in the committee reports. For example, the committee reports make no mention of the overpayments that result from receiving "aid-paid-pending" an unsuccessful appeal or from adjusting grants based on estimated income. Yet, petitioners apparently concede that such overpayments are within the phrase "any overpayment."

In summary, the overpayments which resulted from the reversed injunction fall within the plain meaning of the phrase "any overpayment" in 42 U.S.C. § 602(a)(22). There is nothing in the committee reports or other legislative material which indicates that Congress intended to give those words anything other than their ordinary meaning.

II

PETITIONERS' ARGUMENTS LACK MERIT

In demonstrating that the excess payments in question were "overpayments" within the meaning of 42 U.S.C. § 602(a)(22) we, in effect, answered the main thrust of petitioners' claims. However, it is appropriate to separately discuss certain of petitioners' specific arguments.

A. The Alleged "Withdrawal Of Equitable Jurisdiction"

Petitioners allege that unless this Court adopts their "interpretation" of section 602(a)(22), the statute will operate to "withdraw equitable jurisdiction" from the district courts by implication, which is disfavored. That argument is premised on a complete misunderstanding of the nature of a trial court's "equitable jurisdiction."

Absent equitable powers, a court could do no more than enter a money judgment against a defendant who violated the law. A court with equitable powers, however, can grant other forms of relief when monetary relief would be inadequate. For example, a court, in the exercise of equitable powers, can issue orders for specific

performance, injunctions, restitution, writs of mandate and a host of other remedies. There is no question but that district courts have equitable powers.

But that does not mean that the district court, in the exercise of its equitable jurisdiction, can decide when and to what extent congressional mandates are to be enforced. District courts have equitable powers to carry out the policies established by Congress, not to fashion their own policies.

Petitioners rely on this Court's decision in *Hecht Co.* v. *Bowles*, 321 U.S. 321 (1944) for the proposition that, regardless of who is right as a matter of law, the district court, in the exercise of "equitable jurisdiction," can "balance the hardships and the public interest" and determine whether or not to grant an injunction to enforce the law. We do not believe that this Court's holding in *Hecht* goes nearly as far as petitioners assert. That point was made clear in this Court's more recent holding in *TVA* v. *Hill*, 437 U.S. 153 (1978).

TVA was an action brought under the Endangered Species Act of 1973 to enjoin the completion of the Tellico Dam and Reservoir Project on the ground that completion of the project would eliminate a "critical habitant" of the snail darter, an "endangered species." The district court refused to enjoin the completion of the then virtually completed multi-million dollar project on the ground that not every violation of the law had to be enjoined and that he had "equitable jurisdiction" to consider the "public interest" in seeing the project completed. This Court affirmed the Court of Appeals' reversal. In this Court the

petitioner cited the *Hecht* case, as the petitioners in this case have. This Court responded, pages 194-195,

> "But these principles take a court only so far. Our system of government is, after all, a tripartite one, with each branch having certain defined functions delegated to it by the Constitution. While '[i]t is emphatically the province and duty of the judicial department to say what the law is,' *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803), it is equally--and emphatically--the exclusive province of the Congress not only to formulate legislative policies and mandate programs and projects, but also to establish their relative priority for the Nation. Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought.
>
> * * *
>
> "Our individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress is to be put aside in the process of interpreting a statute. Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end. We do not sit as a committee of review, nor are we vested with the power of veto. . . .
>
> * * *
>
> "We agree with the Court of Appeals that in our constitutional system the commitment to the separation of powers is too fundamental for us to pre-empt congressional action by judicially decreeing what accords with 'common sense and the public weal.' Our Constitution vests such responsibilities in the political branches."

That same rule was reiterated as recently as June 17 of this year in a different context in *INS* v. *Pangilinan*, ___ U.S. ___, 48 CCH S.Ct. Bull. p. B 2801 (1988), at 2807-8.

Congress no more intruded upon the "equitable jurisdiction" of the district court when it established the policy that "any overpayment" should be repaid than it did when it established the policy of protecting "endangered species," even in those situations where a particular district court judge might think it "inequitable" to do so.

In clear, unmistakable terms, Congress has dictated that overpayments must be repaid. District courts cannot, under the guise of "equitable jurisdiction," act in such a way as to defeat that policy.

B. The Alleged "Chilling Effect"

Petitioners assert that:

> "The decision [of the Court of Appeal] creates a chilling effect that will pervade all litigation around policies and practices of the AFDC program."

That far-fetched statement is supported by nothing more than petitioners' own *ipse dixit*.

In *Arkadelphia Co.* v. *St. Louis Ry. Co.*, 249 U.S. 134 (1919), the plaintiff railroads had obtained an injunction enjoining the State from enforcing certain passenger and freight tariffs. After the injunction was reversed by this Court, the question arose as to whether the plaintiffs had to pay back to the shippers the difference between what they actually collected and what they would have collected had the injunction not been issued. This Court referred to those amounts as "overcharges" (249 U.S., 143) which had to be repaid, stating, page 145,

> "But, in our opinion, this portion of the claims is allowable against the railway companies themselves upon the principle, long established and of general

> application, that a party against whom an erroneous judgment or decree has been carried into effect is entitled, in the event of a reversal, to be restored by his adversary to that which he has lost thereby. This right, so well founded in equity, has been recognized in the practice of the courts of common law from an early period."

It is nothing less than silly to suggest that the rule recognized so long ago by this Court has had a "chilling effect" on litigation.

The rule advocated by petitioners, on the other hand, could have a devastating effect on the federal and state treasuries, which are already at the breaking point. Petitioners would create a one-way street – a "heads they win, tails we lose" situation in which the plaintiffs would keep the money to which they were never entitled. To obtain a TRO or injunction in a "poor people" versus "the government" case is not difficult, particularly when the plaintiff's attorneys come to court wearing the mantle of the "public interest." It is not hard to imagine what would occur if the trial courts knew, under the rule advocated by petitioners, that they had *carte blanche* to give away state and federal dollars without any real threat that the money might have to be repaid. (Remember, in this case alone the cost of the erroneously issued injunction required the State to overpay recipients at the rate of $2.5 million per month.) And once a TRO or injunction was issued, there would be no incentive to move the case to a speedy conclusion. To the contrary, plaintiffs would be encouraged to drag their feet, as they did in this case, and delay the case at every stage. (Thus, in the present case we find ourselves in 1988 still trying

to conclude litigation that started with the implementation of the Omnibus Budget Reconciliation Act of 1981.)

In short, the decision of the Court of Appeal will not result in a "chilling effect" on welfare litigation. Nor does it confront the plaintiffs with a "Hobson's choice." To the contrary, it simply puts welfare litigants in the same position as other litigants, namely, if they want to seek equity (i.e., obtain an injunction and reap the benefits of the trial court's decision pending appeal) they must also do equity (i.e., repay the money if they eventually lose.)

C. The Alleged Lack of "Plain Meaning"

To support their contention that "overpayment" is an ambiguous word with no "plain meaning," petitioners cite 42 U.S.C. § 603(i) and state that "overpayment" has a different meaning there than in section 602(a)(22). The contention is wrong. Section 601(i) imposes fiscal sanctions upon a state if its rate of "erroneous excess payments" exceeds established tolerance levels. The statute imposes what is generally referred to as the federal agency's "quality control" ("QC") program. The purpose of a QC audit is to determine whether the State was properly running its AFDC program during the period being audited. It would most certainly be wrong to say that a State was not properly running its AFDC program because it was complying with an injunction that was being appealed. But after the injunction has been reversed and the court-ordered payments are collectable overpayments, the federal agency could certainly hold that the failure to recoup the overpayments resulted in "overpayments" for QC purposes. For example, if the State paid $700 to a family that would only be paid $680

if mandatory recoupment had been initiated, there would certainly be an "overpayment" of $20 for QC purposes. Therefore, there is absolutely no inconsistency between the use of the terms "overpayment" in sections 602(a)(22) and 603(i).

Petitioners state that the overpayments in question are not "overpayments" because, in petitioners' words, "HHS and state welfare agencies never treated them that way before this litigation." The simple answer is that this is the first case in which the issue has arisen since the enactment of section 602(a)(22) in 1981. Prior to that time, the States could decide when and to what extent, if any, overpayments would be collected. Petitioners assert that 42 States had an overpayment recovery policy and that "neither the federal nor state governments have identified a single case where the term 'overpayment, was extended to court-ordered payments prior to this case." In making that statement, petitioners forget the fact that they, as the plaintiffs, had the burden of proof. It was not up to the federal or state defendants to affirmatively disprove every unsupported factual statement made by petitioners' counsel. And the failure to do so does not make the unsupported statement true. In any event, neither HHS nor California was in any position to know what every State did in every case in the past.

D. Petitioner's Equity Rhetoric

The petition is replete with policy rhetoric in which petitioners really do no more than voice their disapproval of the basic requirement that overpayments be corrected. For example, it is alleged that having a current grant

reduced by up to 10 percent to recoup a past overpayment is "devastating". As held by this court in *Bowen* v. *Gilliard*, 483 U.S. ___, 97 L.Ed.2d 485, 107 S.Ct. 3008 (1987), at 3014-15,

> "The District Court was undoubtedly correct in its perception that a number of needy families have suffered, and will suffer, as a result of the implementation of the DEFRA amendments to the AFDC program. Such suffering is frequently the tragic by-product of a decision to reduce or to modify benefits to a class of needy recipients. Under our structure of government, however, it is the function of Congress-not the courts – to determine whether the savings realized, and presumably used for other critical governmental functions, are significant enough to justify the costs to the individuals affected by such reductions."

It should be obvious that the alleged "hardships" imposed by recoupment of prior overpayments apply to all overpayment recoupments, regardless of the reason for or cause of the overpayment. As explained earlier, overpayments and underpayments can occur for any number of reasons – some caused by recipient error, some cause by county error, and some resulting from the way the system operates. Assume, for example, that California had misread the 1981 OBRA income computation amendments and had computed all AFDC grants by using net rather than gross income in making grant computations. Petitioners would then concede that all the overpayments at issue in this case would have been caused by "agency error" and were, therefore, "overpayments" that had to be corrected. Yet all the alleged "hardships" would still be present. As far as any individual family is concerned,

it makes not a whit of difference whether the overpayment was caused by a court order or by agency error. The burden of paying it back is the same in either case. Yet, Congress has mandated that "any overpayment" be corrected. Congress dealt with the equitable considerations by limiting the rate of recovery to no more than 10 percent of the maximum grant amount per month. If petitioners are dissatisfied with the way Congress mandated the AFDC "overpayment" statute to operate, they should ask Congress to amend the statute to make it read like the SSI "overpayment" provision, which allows the Secretary to waive overpayment collections where the recipients were "without fault." 42 U.S.C. § 1383(b).

CONCLUSION

The decision of the Court of Appeal is correct. As a result of the erroneously issued injunction, petitioners received more money than they were entitled to receive under a proper reading of the statutes. Accordingly, they received more money than equivalent families in other States where the courts refused to enter such injunctions. Having to repay the monies they should never have received in the first place does not violate the statute or principles of equity.

The petition for writ of certiorari should be denied.

Respectfully submitted,

JOHN K. VAN DE KAMP
Attorney General
of the State of California

JOHN J. KLEE, JR.
Deputy Attorney General

Attorneys for State Respondents

No. 87-1867

(4)

Supreme Court, U.S.
FILED
JUL 7 1988
ROBERT L. STANION, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

SANDRA TURNER, ET AL., PETITIONERS

v.

LINDA MCMAHON, OTIS R. BOWEN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General
JOHN R. BOLTON
Assistant Attorney General
WILLIAM KANTER
RICHARD OLDERMAN
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether Section 402(a)(22) of the Social Security Act, 42 U.S.C. (Supp. III) 602(a)(22), which requires a state agency administering the Aid to Families with Dependent Children program (AFDC) to recover "any overpayment" made to AFDC recipients, applies to overpayments made under a later overturned court order.

2. Whether Section 402(a)(22) of the Social Security Act, 42 U.S.C. (Supp. III) 602(a)(22), unlawfully curtails the equitable jurisdiction of federal courts.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	6
Conclusion	9

TABLE OF AUTHORITIES

Cases:

Aetna Life Ins. Co. v. *Haworth*, 300 U.S. 227 (1937)	5, 8
Arkadelphia Milling Co. v. *St. Louis S.W. Ry.*, 249 U.S. 134 (1919)	5
Helvering v. *Hammel*, 311 U.S. 504 (1941)	7-8
Lauf v. *E.G. Shinner & Co.*, 303 U.S. 323 (1938)	8
United States v. *American Trucking Ass'ns*, 310 U.S. 534 (1940)	6

Constitution, statutes and regulations:

U.S. Const. Art. III	5, 8
Anti-Injunction Act, 28 U.S.C. 2283	8
Declaratory Judgment Act, 28 U.S.C. 2201 *et seq.*	5
Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494	2
Johnson Act, 28 U.S.C. 1342	8
Norris-La Guardia Act § 1, 29 U.S.C. 101	8
Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2318, 95 Stat. 856	7
Social Security Act:	
Tit. II, 42 U.S.C. (& Supp. III) 401 *et seq.*:	
42 U.S.C. 404	6
42 U.S.C. 404(a)	6
42 U.S.C. 404(b)	6

Statutes and regulations—Continued: Page

Tit. IV, 42 U.S.C. (& Supp. III) 601 *et seq.*:
§ 402(a)(8), 42 U.S.C. (Supp. III) 602(a)(8) 2
§ 402(a)(22), 42 U.S.C. (Supp. III) 602(a)(22) .. 3, 4, 5, 6, 7, 8
§ 403(i), 42 U.S.C. 603(i) 7
§ 403(i)(1)(A), 42 U.S.C. 603(i)(1)(A) 7
§ 403(i)(1)(B), 42 U.S.C. 603(i)(1)(B) 7
§ 403(i)(1)(C)(ii), 42 U.S.C. 603(i)(1)(C)(ii) 7
Tit. XVI, 42 U.S.C. (Supp. III) 1383(b)(1) 6
Tax Injunction Act, 28 U.S.C. 1341 8

Statutes and regulations

38 U.S.C. 3102(a) 6
42 U.S.C. 1988 5
Cal. Welf. & Inst. Code (West 1980 & Supp. 1988):
§ 10962 5
§ 11004(e) 5
45 C.F.R.:
Section 205.10(a)(3) 9
Section 233.20(a)(13) 3, 4
Section 233.20(a)(13)(B) 3

Miscellaneous:

HHS Action Transmittal No. SSA-AT-85-10 (Apr. 30, 1985) 3
S. Rep. 97-139, 97th Cong., 1st Sess. (1981) 7

In the Supreme Court of the United States

OCTOBER TERM, 1988

No. 87-1867

SANDRA TURNER, ET AL., PETITIONERS

v.

LINDA MCMAHON, OTIS R. BOWEN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-29) is reported at 830 F.2d 1003. The decision of the district court (Pet. App. 30-53) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 56-57) was entered on October 16, 1987. A petition for rehearing and suggestion for rehearing en banc were denied on February 22, 1988 (Pet. App. 58-61). The petition for a writ of certiorari was filed on May 6, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In November 1981, petitioners, a class of persons receiving assistance under the Aid to Families with Dependent Children (AFDC) program, filed suit in the United

States District Court for the Northern District of California. The complaint alleged, among other claims, that the State of California, in implementing directions issued by the Secretary of the Department of Health and Human Services (HHS) (Secretary), had improperly calculated the amount of benefits due those AFDC recipients who work.[1] The district court, concluding that the $75 work expense disregard should be deducted from net income, and thus should not be reduced by work expenses reflected in mandatory payroll deductions, enjoined the State of California from implementing its new regulations and enjoined the Secretary from terminating federal matching funds due the State; the court of appeals affirmed (*Turner* v. *Woods*, 559 F. Supp. 603 (1982), aff'd, 707 F.2d 1109 (1983)). Pet. App. 10.

On August 10, 1984, after certiorari was granted,[2] Justice Rehnquist, acting as Circuit Justice for the Ninth Circuit, granted the Secretary's application for a stay of the district court injunction "prospectively from July 18, 1984." *Heckler* v. *Turner*, 468 U.S. 1305, 1309 (1984).[3] Thereafter, this Court unanimously reversed the court of appeals' judgment, holding that "mandatory tax with-

---

[1] The primary issue was whether the $75 standard work expense disregard in Section 402(a)(8) of the Social Security Act, 42 U.S.C. (Supp. III) 602(a)(8), should be deducted from net income or gross income in determining AFDC benefits. In other words, whether the disregard encompassed all work expenses, including those reflected in mandatory payroll deductions, or only those expenses the claimant paid out of his disposable income. Pet. App. 10.

[2] See 465 U.S. 1064 (1984).

[3] Justice Rehnquist based his decision on the recently-enacted Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494, which made clear that the term "earned income" in Section 402(a)(8) of the Social Security Act meant gross earned income. See 468 U.S. at 1306-1307.

holdings were among the items encompassed by the flat-sum disregard of [Section 402(a)(8)]." *Heckler* v. *Turner*, 470 U.S. 184, 211 (1985).

2. As a result of this Court's decision in *Heckler* v. *Turner*, the Secretary, on April 30, 1985, ordered states to recover overpayments made to AFDC recipients between the date of the district court's permanent injunction, July 29, 1982, and Justice Rehnquist's stay, August 10, 1984 (Pet. App. 11).[4] When the State of California sought to

---

[4] See HHS Action Transmittal No. SSA-AT-85-10 (Apr. 30, 1985). The Social Security Act and the Secretary's regulations authorized this directive. Section 402(a)(22) of the Social Security Act, 42 U.S.C. (Supp. III) 602(a)(22), requires that state AFDC plans must

> provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of–
>
> (A) an overpayment to an individual who is a current recipient of such aid * * *, recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member * * *.
>
> (B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family * * *.

The applicable regulations reiterate that a state "shall recover" an overpayment from, among others, "any individual members of the overpaid assistance unit whether or not currently a recipient" (45 C.F.R. 233.20(a)(13)(B)). The Secretary has defined an overpayment as "a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible" (45 C.F.R. 233.20(a)(13)). Recovery is to be by set-off, but "[i]f the State recovers from individuals who are no longer recipients, or from recipients who refuse to repay the overpayment from their income and resources," recovery is to be by "appropriate action under State law * * *" (45 C.F.R. 233.20(a)(13)(B)).

comply with the Secretary's order, petitioners filed a motion in the district court to prohibit the State from recouping any AFDC overpayments. In their supplemental complaint, petitioners argued that overpayments made to AFDC recipients under a court order were not "overpayments" within the meaning of Section 402(a)(22) and the applicable regulations. The State countered that such overpayments were recoverable under the statute. The State also filed a third-party complaint against the Secretary, asserting that if the State were prohibited from recovering overpayments, the Secretary should be prohibited from imposing sanctions for the State's failure to comply with federal law. Pet. App. 11-14.

The district court, presented with cross-motions for summary judgment, entered judgment in favor of petitioners. After reviewing the legislative history of Section 402(a)(22), the court concluded that "payments made pursuant to an injunction which is subsequently reversed are not 'overpayments' under 42 U.S.C. 602(a)(22) * * *" (Pet. App. 43). The court accordingly enjoined the State from "recouping [AFDC] benefits paid pursuant to [the] permanent injunction of July 29, 1982" (*id.* at 52), and also enjoined the Secretary "from taking any action to declare that California is out of conformity with federal law" (*id.* at 52-53).

3. The court of appeals reversed (Pet. App. 1-29), holding that "[t]he plain language" of Section 402(a)(22) required the recoupment of "any overpayment" to AFDC recipients and did not "distinguish between classes of overpayments that may be recouped" (Pet. App. 20). The court found that the Secretary's regulation, 45 C.F.R. 233.20(a)(13), which "impose[d] no restriction on the right of a state to recoup any overpayment" (Pet. App. 21), fully supported this reading of Section 402(a)(22).

The court of appeals rejected petitioners' argument that such a strict reading of the statute would unconstitutionally "curtail a district court's equitable jurisdiction" (Pet. App. 26). Rather than limiting a district court's equitable jurisdiction, Congress "expressly expanded the remedies available to recover an overpayment of AFDC funds" (*id.* at 27). In the court's view, Section 402(a)(22) permitted a state to seek recovery of an overpayment under its "common law right of restitution" (Pet. App. 27, citing *Arkadelphia Milling Co.* v. *St. Louis S.W. Ry.*, 249 U.S. 134 (1919)), or under the statute itself by filing an action under state law. Finally, the court observed that Congress has the power under Article III "to fashion new remedies" (Pet. App. 27, citing the Declaratory Judgment Act, 28 U.S.C. 2201 *et seq.*), and "to limit the applicability of the traditional equitable remedies available in the district court" (Pet. App. 27-28, citing *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227 (1937)).[5]

---

[5] The court also rejected petitioners' argument that Section 402(a)(22) was unconstitutional because " '[a]t no time would the state welfare agency have to pose the issue of restitution to a court' " (Pet. App. 24). Under California law, the State must notify each AFDC recipient of the proposed reduction in benefits and must provide a hearing if the recipient so requests. See Cal. Welf. & Inst. Code § 11004(e) (West Supp. 1988). If the recipient remains dissatisfied after the hearing, he may seek judicial review of the decision under California law. See Cal. Welf. & Inst. Code § 10962 (West 1980). In other words, "California has a statutory scheme which permits * * * AFDC recipients to obtain an administrative hearing and judicial review of a determination made concerning overpayments" (Pet. App. 26).

In light of its disposition, the court of appeals also vacated the award of attorneys' fees to petitioners under 42 U.S.C. 1988 (Pet. App. 28).

ARGUMENT

The decision below is correct. It does not conflict with any decision of this Court or of any other court of appeals. Accordingly, review by this Court is not warranted.

1. Petitioners renew the contention (Pet. 30-42) that, despite the language of Section 402(a)(22), the statute does not include overpayments made under an injunction reversed on appeal. This Court has long recognized, however, that "[t]here is * * * no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *United States* v. *American Trucking Ass'ns*, 310 U.S. 534, 543 (1940). Section 402(a)(22) unambiguously provides that an AFDC plan must "provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the * * * plan * * *." The statute makes no distinctions between types of overpayments. And, unlike other statutes authorizing agencies to recover overpayments,[6] Section 402(a)(22) does not authorize the Secretary to refrain from seeking

---

[6] For example, 42 U.S.C. 404, pertaining to Federal Old Age, Survivors, and Disability benefits, authorizes the Secretary to recover overpayments (42 U.S.C. 404(a)), but provides (42 U.S.C. 404(b)) that

> there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

Similar language appears in other federal benefits statutes (see, *e.g.*, 38 U.S.C. 3102(a) (overpayment of veterans' benefits); 42 U.S.C. (Supp. III) 1383(b)(1) (Supplemental Security Income for the Aged, Blind, and Disabled (SSI) benefits)); Section 402(a)(22) contains no such qualifications.

overpayments where recovery would be inequitable. By its terms, the Secretary must recover any and all overpayments.[7]

Contrary to petitioners' argument (Pet. 35-42), the legislative history confirms the straightforward meaning of Section 402(a)(22). Congress enacted the recoupment provision as part of Section 2318 of the Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. No. 97-35, 95 Stat. 856. This provision was a critical part of "the cost-cutting focus of the OBRA amendments." *Heckler* v. *Turner*, 470 U.S. 184, 205 (1985). Indeed, the Senate Report on OBRA stated that the recoupment provision would save the government, in the years 1982 through 1984, an estimated $330 million. See S. Rep. 97-139, 97th Cong., 1st Sess. 519 (1981). By requiring recoupment of "any overpayment," Congress clearly intended to save the federal government substantial sums of money. Although a common or literal reading of a statute may be rejected "where acceptance of that meaning would lead to absurd results * * * or would thwart the obvious purpose of the statute" (*Helvering* v. *Hammel*, 311 U.S. 504, 510-511

---

[7] Petitioners also contend (Pet. 33-34) that Section 402(a)(22) cannot be read literally because the Secretary treats this provision differently from Section 403(i) of the Social Security Act, 42 U.S.C. 603(i). The latter section authorizes the Secretary to withhold from states, in certain well-defined circumstances, funds equivalent to "erroneous excess payments." Congress defined this term to include "overpayments to eligible families" (42 U.S.C. 603(i)(1)(C)(ii)). Section 403(i), however, differs from Section 402(a)(22) in several respects, including its having a provision authorizing the Secretary to waive the recovery of overpayments (42 U.S.C. 603(i)(1)(B)), and a provision setting tolerance levels for erroneous overpayments (42 U.S.C. 603(i)(1)(A)). Moreover, the record in this case suggests, contrary to petitioners' assertion, that the Secretary would read the term "excess erroneous payments" as including those made under a later reversed court order.

(1941)), Congress's cost-cutting objective in enacting the statute plainly supports the plain meaning of the provision that any overpayment should be recovered.

2. Petitioners also argue (Pet. 13-16, 19-24) that the court of appeals' literal reading of Section 402(a)(22) unconstitutionally deprives district courts of equitable jurisdiction. Petitioners' claim is wrong. Congress can, consistently with Article III, create statutory remedies unknown at common law; this is precisely the essence of the recoupment provision. And, contrary to petitioners' suggestion, Congress can limit a district court's power to apply traditional equitable remedies. For example, Congress, through Section 1 of the Norris-La Guardia Act, 29 U.S.C. 101, deprived federal courts of jurisdiction to enter injunctive relief in certain labor disputes. *Lauf* v. *E.G. Shinner & Co.*, 303 U.S. 323, 330 (1938) (footnote omitted) ("There can be no question of the power of Congress [in enacting the Norris-La Guardia Act] to define and limit the jurisdiction of the inferior courts of the United States."); see also the Tax Injunction Act, 28 U.S.C. 1341; the Johnson Act, 28 U.S.C. 1342; the Anti-Injunction Act, 28 U.S.C. 2283.[8] Under the circumstances, Congress's requiring repayment of AFDC benefits did not impermissibly infringe upon the equitable jurisdiction of the federal courts.[9]

---

[8] Cf. *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 240 (1937) ("In providing remedies * * * in relation to cases and controversies in the constitutional sense the Congress is acting within its delegated power over the jurisdiction of the federal courts which the Congress is authorized to establish.").

[9] Petitioners also apparently contend (Pet. 16-19, 24-30) that, under the court of appeals' application of Section 402(a)(22), the State's recoupment of overpayments would escape meaningful judicial review. As the court of appeals correctly concluded (Pet. App. 26), however,

> California has a statutory scheme which permits current AFDC recipients to obtain an administrative hearing and judicial review

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

CHARLES FRIED
Solicitor General
JOHN R. BOLTON
Assistant Attorney General
WILLIAM KANTER
RICHARD OLDERMAN
Attorneys

JULY 1988

---

of a determination made concerning overpayments. Similarly, a former AFDC recipient is provided judicial review when the county initiates an action to collect the overpayments.

Moreover, the Secretary's regulations provide that every AFDC applicant or recipient "shall be informed in writing at the time of application and at the time of any action affecting his claim * * * [o]f his right to a hearing * * *" (45 C.F.R. 205.10(a)(3)). These state and federal provisions belie petitioners' assertion that adequate judicial review would be unavailable.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1988—202-037/60534

87-1867

Supreme Court, U.S.
FILED
JUL 18 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

SANDRA TURNER, ET AL.

PETITIONERS

v.

LINDA MCMAHON, OTIS R. BOWEN, ET AL.

RESPONDENTS

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

MARK N. AARONSON
ATTORNEY OF RECORD
San Francisco Lawyers Committee
for Urban Affairs
301 Mission St., Suite 400
San Francisco, Calif. 94105
(415) 543-9444

MARK GREENBERG
RICHARD A. ROTHSCHILD
Western Center on Law and Poverty, Inc.
3535 W. Sixth St.
Los Angeles, Calif. 90020
(213) 487-7211

MARILYN KAPLAN
Orrick, Herrington & Sutcliffe
600 Montgomery St.
San Francisco, Calif. 94111
(415) 392-1122

TABLE OF AUTHORITIES

Page(s)

Cases

Brown v. Swann, 10 Pet. 496 (1836) . . . 2

Hecht Co. v. Bowles, 321 U.S. 321 (1944). 2

Porter v. Warner Holding Co., 328 U.S. 395 (1946) 1

TVA v. Hill, 437 U.S. 153 (1978) . . . 2,3

Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982) 1,3

Statutes

16 U.S.C. §1531. 3

42 U.S.C. §602(a)(22). 1,5

The court of appeals opinion raises an important question requiring review because it establishes, absent any explicit congressional direction, a novel exception to the equitable jurisdiction of courts to determine who bears the consequences of a reversed injunction. Neither the statutory language nor the legislative record of the AFDC overpayment provision, 42 U.S.C. §602(a)(22), indicates that Congress intended to have such an unprecedented effect upon the judiciary's traditional equitable powers.

Petitioners do not dispute that Congress may limit a federal court's inherent power to apply traditional equitable remedies. The key point set forth in the Petition for a Writ of Certiorari but ignored by respondents is that such limitations are extraordinary and ought not be inferred. Weinberger v. Romero-Barcelo, 456 U.S. 305, 313 (1982); Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946);

Hecht Co. v. Bowles, 321 U.S. 321, 329-30 (1944); Brown v. Swann, 10 Pet. 496, 506 (1836); Petition, at 19-24.

When Congress conditions or limits a court's equitable jurisdiction, it does so explicitly and plainly. Indeed, the very statutes cited by the United States in its opposition brief (Fed. Opp. at 8) demonstrate the directness and clarity which characterize how Congress acts when it seeks to curb the equitable powers of the courts. Such language is a far cry from the inferences which need to be drawn from the phrase "any overpayment" to reach a comparable result in this case.

In a similar vein, this Court has been wary of overstating congressional limitations on a court's traditional discretion to issue an injunction to enforce legislative policies. State respondents cite TVA v. Hill, 437 U.S. 153 (1978), as though it stands for the proposition that legislative language easily can be read to curtail a

court's discretion (State Opp. at 6-8). But Hill did not involve divesting the court of an important aspect of its equitable jurisdiction, as does the instant case. Rather, Hill concerns the court's duty to exercise its equitable powers to enforce a very specific legislatively enacted policy judgment.[1]

Hill appears to be a case very much confined to its particular facts. In Weinberger v. Romero-Barcelo, 456, U.S. 305, subsequent case also involving fairly specific policy directions, this Court distinguished Hill and refused to hold that a district court had to issue an injunction. The Court emphasized that it does "not lightly assume that Congress has

---

[1] The Endangered Species Act, 16 U.S.C. §1531 et seq., at issue in Hill, was very unusual in its degree of specificity regarding the decisive weight to be given the preservation of an endangered species, such as the snail darter, as against all other considerations. The Court therefore held that the district court had no choice but to issue the requested injunction to enjoin completion of the endangering dam.

intended to depart from established [equity] principles." Id. at 313.

Nevertheless, the Ninth Circuit lightly assumes just such a departure, disregarding the impact of its interpretation on the traditional powers of a court of equity to manage the effects of an injunction reversed on appeal. The problem posed by this case is not potential judicial sabotage of a legislative policy judgment as the state suggests (State Opp. at 6-7), but rather an inappropriate erosion of the judiciary's own power. It is a problem which warrants full review by this Court.

The United States seeks to create an impression that there is no curtailment of equitable jurisdiction by emphasizing that individuals charged with an overpayment can obtain judicial review (Fed. Opp. at 8-9, n.9). As discussed in the Petition, at 17-19, judicial review under the court of appeals opinion would be limited to deter-

mining the mathematical accuracy of the assessed amount. No court would have jurisdiction to decide whether recoupment is equitable--the central issue in any restitution proceeding after the reversal of an injunction.

Both respondents note that, in contrast with some other statutes, 42 U.S.C. §602(a)(22) does not provide for waiving an overpayment when collection of the overpayment would be against equity and good conscience. Fed. Opp. at 6, State Opp. at 13. However, petitioners do not contend that either a court or a welfare agency has authority under Section 602(a)(22) to waive overpayments.[2] They only contend that there is no evidence in the language or legislative history of the section that Congress intended to include benefits paid

---

[2] This is precisely why judicial review of assessment of an overpayment under section 602(a)(22) is not comparable to a restitution proceeding after reversal of an injunction.

under a subsequently reversed injunction within its conception of "overpayments." Petition, at 30-42. Accordingly, the statute should not be construed to divest a district court from its equitable jurisdiction to decide which party should bear the costs of a reversed injunction. The problem raised is of an entirely different institutional dimension than the one addressed by respondents in their arguments.

July 14, 1988

Respectfully submitted,

MARK N. AARONSON
ATTORNEY OF RECORD
San Francisco Lawyers' Committee for Urban Affairs

RICHARD A. ROTHSCHILD
MARK GREENBERG
Western Center on Law and Poverty, Inc.

MARILYN KAPLAN
Orrick, Herrington & Sutcliffe

Attorneys for Petitioners